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Supreme Court, U.S.
FILED

No. 04 1121 FEB 17 2005

OFFICE OF THE

In The

Supreme Court of the United States

THORNBURY NOBLE, LTD.,

Petitioner,

v.

THORNBURY TOWNSHIP, Chester County, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, and the Members of the Board of Supervisors in their official capacity: PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A.W. WILSON and ROBERT A. MacDONNELL,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOLUME II, PAGES 184 TO 423

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EXHIBIT 12

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THORNBURY NOBLE, LTD.	: CIVIL ACTION
Plaintiff	:
Vs.	:
THORNBURY TOWNSHIP, Chester County, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, and The members of the Board of Supervisors in their official capacity: PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A.W. WILSON, and ROBERT A. MacDONNELL,	:
Defendants	: NO. 99-CV-6460

AUGUST 2, 2001

Oral deposition of ALLAN BAUMHOLTZ, in the above captioned matter, held at the offices of Siana, Bellwoar and McAndrew, 941 Pottstown Pike, Chester Springs, Pennsylvania, commencing at 1:30 p.m., on the above date, before Bonnie Block, Court Reporter and Notary Public.

* * *

[7] A. Yes.

Q. Are you taking any medication or under the influence of anything that would make it difficult for you to take in my question and give me an answer to them?

A. Nothing that I take would impair my ability to respond to you properly.

Q. Very good. All right. Would you state your name and address for the record, please?

A. Allan P. Baumholtz, B-A-U-M-H-O-L-T-Z; 1824 Spruce Street, Philadelphia, Pennsylvania 19103.

Q. What is your relationship to Thornbury Noble?

A. I am a limited partner in the legal structure of that complex.

Q. When did you become a limited partner?

A. 1991, I believe it was.

Q. Have you remained in the [8] same capacity since 1991?

A. No. When I first got involved with Mr. Acciavatti, as he mentioned here earlier, he had come upon hard times financially. And he needed money and I made an investment with him. I was enamored with his plan and what I thought Thornbury Township was all about and I willingly invested.

Q. What was it about Thornbury Township that enamored you?

A. Well, I'm a real estate appraiser. I'm licensed in both Pennsylvania and New Jersey. I'm a city dweller for all my life and just love the country setting. And when I

get out there and see how business is thriving, I just can't get enough of it.

Q. So in the beginning, in 1991, you were not a limited partner?

A. I was a limited partner, but inactive. And anything that was going on, the Acciavattis were doing, they just [9] needed my money.

Q. Understood. Has your role changed as regards to ownership, or are you still a limited partner?

A. Still a limited partner, but I own 35 percent now of the legal entity.

Q. As opposed to what in 1991?

A. Five, 10, 15. It's gone up to 35 as money went into the project.

Q. Okay. Now, you said that in the beginning you played very much of a passive role.

A. True.

Q. When did you take an active role as regards to the Thornbury Noble site?

A. My recollection was the beginning of 1998. Matters had gotten to a point of total frustration for both John and Richard, more John than Richard. Richard is younger, as you do know. And it seemed that he just was unable to make any headway. And I was on

* * *

[14] Pike. And I had John and Richard come with me, because I do not have the full understanding of what the

center was going to cost him. So they accompanied me to that meeting. At that point, we were introduced to Richard Dugan, who was my contact, because he then came in as the head of the Real Estate Department. Although Skip was in charge of real estate for all the brothers, Dugan sat in as, to use your word, the point man. He was the guy who had to go out and approve the sites.

Q. When did this take place, where you reached out to Genuardi's?

A. This had to be prior to that July meeting when Dugan went with me, had to be within that four, five-month period.

Q. Did the action of you reaching out to Genuardi's occur after you changed from a passive to an active role?

* * *

[19] have trouble running errands for people. It's me or it's not me. And that was the whole thing.

Q. Am I correct then that you played no role as regards to Thornbury Noble trying to acquire tenants for the L-shaped strip mall prior to 1999?

A. Yes. I think that's a good statement.

Q. Okay. Prior to the time when you took an active role with Thornbury Noble in the early part of '98, how many land development projects had you been involved in?

A. None. This was my very first. If I may, I didn't consider this, as you are saying, a land development project. I felt this was a completed situation I was walking into in '98. Everything was supposedly done.

Q. In what sense?

A. The approvals were there. Everything was in place.

[20] Q. What was your understanding, in early '98, of what had been approved for that Thornbury Noble site?

A. The configuration of an L-shaped retail center and a pad to incorporate a 12,000 square foot office, for a total of 50,000 square feet that was due us. And my perception was that I had a legal vested right because of the building permit that was in existence and, as you pointed out, had a time limit, that going to them with the idea of the market wasn't a farfetched idea. It was taking a configuration of an L and giving them a box.

Q. Okay. And it was changing the type of use or uses; correct?

A. No. Well, we went from a multi-tenant retail to a single tenant retail.

Q. Okay. At any point, from the time you assumed a more active role with Thornbury Noble up to the present,

* * *

[22] respect to they preferred the building not being right at the intersection of the street entrance to the center, but they wanted it back. To give them full front access, we had to request a change, an increase of the B Commercial of 192 lineal feet. It was less than an acre and a quarter of land area that we were seeking their approval, so that we could put Genuardi's where they wanted to be.

Q. And to do that you would have to achieve rezoning of a Residential parcel, as described by you –

A. Yes.

Q. – to B-Business?

A. Yes. And that was the request that I went in for initially.

Q. In July of 1998?

A. Yes, when I introduced myself as the person in charge of Thornbury Noble.

Q. What was your impression, coming out of that meeting, as to whether

* * *

[95] A. I believe it was in their sole power to make a judgment call and say, yes. I mean, I believe we had the legal right to do it. I think they had the ability to, yes, go forward.

Q. Were you of the mind that Thornbury Noble had any right to have the Thornbury Noble tract rezoned?

A. Absolutely not. I was asking.

Q. Okay. You told me about with the October 6th letter there was an A Plan and a B Plan. And one of the plans was for rezoning and the other plan was to put the supermarket in the B District as it was then zoned.

A. One was rezoning and one was amending the final plan, as I have come to learn the terminology.

Q. Okay. As regards to the plan to amend the final plan, did you, on behalf of Thornbury Noble, acquire any knowledge as to what was submitted to the

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
VOLUME II

THORNBURY NOBLE, LTD. Plaintiff Vs. THORNBURY TOWNSHIP, Chester County, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, and The members of the Board of Supervisors in their official capacity: PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A. W. WILSON, and ROBERT A. MacDONNELL, Defendants	:	CIVIL ACTION NO. 99-CV-6460

AUGUST 10, 2001

Oral deposition of ALLAN BAUMHOLTZ, in the above captioned matter, held at the offices of Siana, Bellwoar and McAndrew, 941 Pottstown Pike, Chester Springs, Pennsylvania, commencing at 9:00 a.m., on the above date, before Bonnie Block, Court Reporter and Notary Public.

* * *

[119] do the – am I over-talking?

Q. Yes.

A. I'm sorry. We were not going to be able to do the market and drugstore operation. And we will emphatically not get it. He was sorry, but, business-wise, they were directed to move on, there are going down to the Waters piece. And they did go down and negotiate.

Q. I want to explore that a little bit. First, I want to understand the proposal on the table, to your understanding, for which you are waiting for a response from the Board of Supervisors, am I correct that proposal is that the Genuardi's store would be located immediately adjacent to the Berdich property line?

A. Not to it, but, yeah, that would be the property that you identified when John was here, the two acres.

Q. Yes.

[120] A. Where his former office was.

Q. Right.

A. That, basically, sits just to the east of this driveway. If you remember, they wanted the driveway for Thornbury Commons to line up with the Westtown Shopping Center. So the two-acre portion is east of this line. And that acreage is greater than 192 feet, but my request was to give me that 192 to accommodate their building.

Q. Genuardi's?

A. The Genuardi's concept, which gave us, at that point, better than 100 feet before the Berdich property. I had acquired the Berdich property in anticipation of my presentation and in my presentation offered to Deed restrict 3.3 acres to Residential, to put in whatever landscape screening was necessary to obliterate the view.

Q. Okay. So the proposal for which you were waiting for a response

* * *

[189] Q. – Dugan that they were going to go elsewhere?

A. Not really. It certainly falls within a reasonable time, considering when I had that presentation and I was waiting for the answer, but, honestly, not.

Q. At what point did you start, Thornbury Noble start to pursue Super Fresh?

A. The second time?

Q. The second time.

A. I think it was about October of '98.

Q. And who was involved from Thornbury Noble's end in pursuing Super Fresh?

A. Well, basically, I initiated a call to John Majczan; I never say his name right. And he was still put out with me because of how I didn't treat him earlier. So I asked John Acciavatti to get back involved, because that was his

* * *

[255] Q. Do you have an independent recollection –

A. Yes.

Q. – of being present for that meeting?

A. Yes, I do.

Q. I note that your attorney now is Carl Hanzelik; is that correct?

A. That is correct.

Q. When did you hire Mr. Hanzelik?

A. I can't give you an exact time. I guess I could, but I don't know off the top of my head. It has to be in this general – I think Hanzelik was not with me in July. Could I see the July 7th meeting minutes? I don't know whether he was with me or not.

MR. STYER: I will represent to you that Jack Nilon was at the July 7th.

THE WITNESS: Nilon was at the 7th, so it was after that that [256] Hanzelik came on board with me.

BY MR. GONZALES:

Q. Were you still using Mr. Nilon or had you switched over?

A. I switched.

Q. Why?

A. Why? I don't truly recall. My recollection is that, in talking with Hanzelik, he was referred to me as a people person and that's my background and I went to him. I just thought he'd be a little – I didn't like Nilon's approach with the Board.

Q. What didn't you like about Nilon's approach with the Board?

A. For our first meeting, in representing me, I found him argumentative. And I don't feel you get anywhere being argumentative. And I thought Hanzelik was just a softer person.

Q. How long did he serve as your attorney in this matter?

[257] A. A couple of months, that's all.

Q. Do you recall who was the attorney that you used after Hanzelik?

A. Mary Ann Rossi.

Q. Do you recall when you hired Mary Ann?

A. I think that was August, late – Hanzelik could have been with her. I think she came on with me August of '98.

Q. Why did you switch from Hanzelik to Mary Ann Rossi?

A. I was introduced to Mary Ann as someone familiar with zoning and had a good rapport with this type of a situation.

Q. Why did you go to the August 4th meeting?

A. I think we were asked. We were invited back and we wanted to, again, see if there was any news. We left the July meeting with the

* * *

[271] Q. Okay. The next sentence says: Mr. MacDonnell replies, if Mr. Baumholtz could prove it would be impossible to develop the property without expanding the size, the Board would re-evaluate the zoning request. Do you recall Mr. MacDonnell saying that?

A. Something to that effect, yes.

Q. And did you respond or did anyone on your behalf respond to Mr. MacDonnell's statement?

A. I don't think Mr. MacDonnell allowed too much of a response.

Q. That wasn't my question.

A. I'm sorry.

Q. Did you hear what my question was?

A. Yeah. Again, no. First, no, but I think the question – the sentence is self-explanatory. I already had the approval for a strip.

Q. The answer is, no?

[272] A. No.

Q. Next paragraph, this talks about Mr. Giacinto. Do you remember Mr. Giacinto addressing the Board at that meeting?

A. Yes.

Q. Do you remember Mr. Giacinto saying, as recorded in the second sentence: Mr. Giacinto told the Board he's very confused and dismayed that the site is going from an office center to a strip shopping center. Do you remember him saying that?

A. I don't remember Mr. Giacinto making any statements, but I will assume, yes.

Q. No, I don't want you to assume. I want to know if you recall Mr. Giacinto making that statement?

A. I'm hard-pressed to say that I specifically remember something from that time vintage.

Q. I understand there are some

* * *

[276] between what would be a specific service oriented location to one that would be multiple tenants. I had no idea who was going to come in.

Q. The next sentence says: Mr. Wilson notes there is no plan and recommended that Mr. Giacinto work with Mr. Baumholtz to help convince the Board to re-evaluate the rezoning request. Do you recall Mr. Wilson saying that at that meeting?

A. Yes. And that, too, I found to be lip service, because I had done my homework with the neighbors and they were there and they were openly not even considered; ignored, I want to say.

Q. But Mr. Wilson made that statement; is that correct?

A. Yes.

Q. Did you respond? Did you or your attorney respond to that statement?

A. Not that I recall.

Q. Next it says: Mr. Wilson

* * *

EXHIBIT 13

[LOGO]
GENUARDI'S
FAMILY MARKETS

April 21,1998 | Faxed:

Mr. John G. Acciavatti, President
Noble Enterprises, Inc.
PO Box 179
Westtown PA 19395

Re: The Commons at Thornbury
Genuardi's Family Markets, Inc.

Dear Mr. Acciavatti:

We have forwarded under separate cover our check in the amount of $4,360.50 for reimbursement of our equal share of the expenses in order to obtain a rezoning of the above captioned property, as outlined in our non-binding letter agreement dated December 5, 1997.

As we discussed in our meeting of April 1, you will be filing for a zoning change and expect to have the rezoning application heard prior to May 30, 1998. If it becomes evident that the rezoning application is not going to be granted, we will decline from sharing in any future expenses.

In addition, as we also discussed, despite the terms outlined in the non-binding agreement of December 5, 1997, if the rezoning application is not approved, Genuardi's Family Markets, Inc. is not prepared to proceed with the project.

Notwithstanding the understanding expressed above, no contract shall exist for the leasing of the store site herein

described until a final lease agreement is executed and delivered by both parties.

Sincerely,

/s/ Richard Dugan
Richard Dugan
Director of Real Estate

RD:dc

cc: Roger K. Wright, Vice President,
Real Estate & Development
Robert C. Fernandez, Esquire

EXHIBIT 14

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA

THORNBURY NOBLE, LTD	*	Civil Action
Plaintiff	*	No. 99 CV-6460
v.	*	
THORNBURY TOWNSHIP, Chester	*	
County, THORNBURY TOWNSHIP	*	
BOARD OF SUPERVISORS, and the	*	
Members of the Board of Supervision	*	
in their official capacity: PATRICIA	*	
A. DEWEY, J. CHRISTOPHER	*	
LANG, WILLIAM A. SCHMIDT, JR.,	*	JURY TRIAL
CHARLES A.W. WILSON and	*	DEMANDED
ROBERT A. MacDONNELL	*	
Defendants	*	

* * *

DEPOSITION OF RICHARD DUGAN

The Deposition of Richard Dugan, taken in the above-captioned case on Tuesday, August 28, 2001, commencing at 11:00 a.m., in the Offices of Giant Foods, 6300 Sheriff Road, Landover, Maryland, 20785, and was reported by Dawn M. Hyde, a Notary Public.

* * *

[13] this deal?

A. Absolutely.

Q. Did you have an understanding about what the Acciavattis and Thornbury Noble intended to do at the site of the Commons at Thornbury?

A. We had worked out a site plan between us. What we needed for them to do to be able for us to build a store.

Q. And what was that, that Genuardi's needed to have done for that site?

A. There were access issues. We needed certain access points. We needed a certain parking ratio. And not only the ratio, but where the parking was located on the site. You can get a parking ratio by putting parking spaces behind a store, which doesn't work. And the placement of the store and how that related to the access points.

Q. Did you understand that Thornbury Noble was intending to request that there be some rezoning of that property?

A. Yes. A portion of the property. My understanding was the front portion was zoned. The rear portion, which we needed to be able to put the store on, was not zoned.

Q. So is it fair to say that Thornbury Noble [14] and Genuardi's discussed the moving back of the store onto that portion that was going to be rezoned?

A. Yes. That was a requirement of Genuardi's, that we could not fit on the zoned portion alone. We needed the rear portion to be rezoned to actually place the store there.

Q. When you say it was a requirement that that property be rezoned, was that to address the issues that you were talking about in terms of the access in and out of the site?

A. It was not only access, it was parking as well. And I believe it's covered in the deal letter or the Letter of Intent under Site Plan, item number XV.

Q. And I'll just paraphrase, but that's that the lessee and lessor will attempt a zoning and plan change to locate the building at the Berdich property line within twelve months.

From that, it says that Genuardi's agreed to share the legal and engineering expenses for that project.

A. I believe that's what we were referring to at the time.

Q. Following the signing of the Letter of

* * *

[22] MR. BELLWOAR: Thank you.

BY MR. STYER:

Q. Mr. Dugan, do you recall writing that letter?

A. I do not recall writing the letter. I recall the contents of the letter.

Q. Can you just tell me – just paraphrase it basically what the contents of that letter were?

A. We had an agreement to share expenses on proceeding forward on the rezoning efforts. Basically what it says, if the rezoning is not obtained, not only are we not going to proceed with any further expenses, but we would not proceed with building the store.

MR. GONZALES: Can I see that exhibit?

(Whereupon, witness proffers document to Mr. Gonzales.)

Q. Was that the first time that Genuardi°s had advised Thornbury Noble that they would not be willing to build without the rezoning?

A. I believe it was probably the first time we advised in writing. We had discussed it prior to that.

MR. BELLWOAR: Mr. Dugan, would you keep your voice up, please. I'm having trouble hearing

* * *

[34] July 24, 1998.

MR. BELLWOAR: July?

MR. STYER: 24, 1998.

MR. BELLWOAR: Thank you.

BY MR. STYER:

Q. Mr. Dugan, this is a memo from Mahlon Rossiter to the Board of Supervisors, dated July 24, 1998.

In this memo, it indicates that Bob MacDonnell, who is a member of the Board of Supervisors, indicated that he had been contacted by Richard Dugan to state that Genuardi's had decided to go with the Dilworthtown Crossing location.

Was it your practice to call Township officials and advise them of Genuardi's decisions about where to locate their stores?

A. Absolutely not. It's real estate practice, especially in the supermarket industry, where you don't announce to anybody, including your competition, what you're doing or where you're going.

Q. Do you recall whether you contacted Mr. MacDonnell and advised him of this fact?

A. I don't recall ever advising Mr. MacDonnell of that. Mr. MacDonnell and I had [35] conversations prior to the letter of July 22 to Thornbury Noble discussing the possibility of the rezoning. But it would be out of character for me to call anybody to say this is – to announce Genuardi's intentions of what they're going to do. If the question was asked, you know, we may discuss it, but that's just out of character.

Q. Do you recall whether Mr. MacDonnell told you that Thornbury Noble was not going to get the rezoning?

A. I recall having conversations with Mr. MacDonnell, and it's my belief that it was Mr. Macdonnell that – because he was the person that I talked to the most, that he was the one that advised me that it didn't look favorable for the Thornbury Noble to be granted that zoning. And that obviously triggered in our decision not to keep pursuing it.

Q. Did Mr. MacDonnell tell you about the Waters tract?

MR. GONZALES: Objection.

You can answer.

A. No. I don't think he told me about it. We were aware of it long before my discussions with him. You know, we had the opportunity earlier than

* * *

[63] we knew that we had to go to the Township to get it rezoned.

Whether we discussed that it would be an uphill battle or how much resistance there was, I don't think it was discussed at the time.

Q. In your experience in developing supermarkets, I mean is it your experience, is it typical or is it atypical for a Township or municipality to resist encroaching commercialism in a residential area?

MR. STYER: Objection to the form.

A. It can go both ways depending on how much the Township wanted to have you there. I've been in places where they welcome you with open arms and they will bend over backwards to accommodate, you know, building a store there. And other places, you know, some places don't want anymore commercial growth at all. They have a no-growth policy.

Q. So the issues that you were experiencing here, would you say that they were out of the ordinary or extraordinary concerning the issues regarding rezoning that residential –

A. I don't think it was out of the ordinary at all.

Q. After that December 5, 1997 meeting, is

* * *

[69] with Mr. MacDonnell.

Q. Tell me about those conversations? I mean who initiated the first contact with Mr. MacDonnell?

A. I believe I called first. His name was given to me by a third party as the person to contact because of –

MR. BELLWOAR: Can you speak up, please. I didn't catch that.

THE WITNESS: I'm not sure what you didn't hear.

MR. BELLWOAR: The answer to that last question, please.

THE WITNESS: I initiated the phone call, because it's a name I was given by a third party as the person to contact. And I'm sure I initiated the first phone call.

MR. BELLWOAR: Thank you.

A. Subsequent to that, I couldn't tell you whether it was a call back or –

Q. Who was the third party that gave you MacDonnell's name?

A. Our outside legal counsel, Steve Volpicelli.

Q. Did he say anything to you about Mr. MacDonnell, other than this is the guy to talk to?

[70] A. That's probably the extent of it. He said, this is the guy to talk to. I think he may have known him from another transaction or so or had dealt with him before.

Q. When you first spoke to Mr. MacDonnell, what did you talk about?

A. I couldn't tell you the exact nature of the conversation. It would be the possibility of rezoning, but I'm sure that was the nature of it, but I couldn't tell you exactly the conversation.

Q. Do you remember what he told you about the rezoning issue?

A. Not specifically.

Q. How about generally?

A. Generally, that it was an issue, it was going to be a problem. He didn't know how the other supervisors were going to vote, but specifically, no, I couldn't recall the exact conversation.

Q. Did he ever tell you why he felt that it may be a problem regarding rezoning?

A. I think – whether he mentioned it or someone else mentioned it, that there was some disappointment in the Acciavattis in not fulfilling the obligations in a timely manner, and that was an issue with the supervisors. That's all I recall.

* * *

[79] A. I don't recall.

Q. If that had happened, would that have been something that you probably would have been made aware of?

MR. STYER: Objection to the form.

A. Generally since we were working together on this project, we would know when filings would take place. Just like today if I were building a store, I would know when the developer was going in for site plan approval and rezoning, because I need to track it.

Q. Do you know whether Thornbury Noble ever submitted an application for rezoning at that site?

A. I don't know. I don't recall.

Q. Prior to the decision by Genuardi's to pull out of Thornbury Noble, do you know whether Genuardi's was ever advised by Thornbury Noble that it had submitted a formal request for rezoning?

A. I don't recall whether they had or not.

Q. Did Genuardi's ever place any deadlines on Thornbury Noble to accomplish rezoning?

A. It may have been discussed. I don't recall a specific date beyond which they would not proceed.

Q. And you said it was discussed. Do you

* * *

[117] for a contact person in the Township, not because of the Waters piece, but because we wanted to let's say find out what's – you know, how our project was proceeding at 926.

Q. Right. I'm just trying to get timing down. Waters would have contacted you first and then as you progressed with the Thornbury Noble site at some point thereafter –

A. I can't confirm that, whether I contacted the Township first or, you know, I was contacted by Waters first. It was all in the spring, but I couldn't tell you the order, whether one was before the other, because it's normal for us to contact the Township, whether there was another site or not.

Q. Now, the reason for contacting the Township was so that you could get an informal read as to where the Township stood on the rezoning, correct?

MR. STYER: Objection to the form.

Q. Is that correct?

A. That would be correct.

Q. And you knew that by calling MacDonnell, you were not going to get any official vote or reaction to the rezoning, correct?

MR. STYER: Objection to the form.

[118] A. That's correct.

Q. And you were not getting any official information, but rather you were getting, if you will inside information as to how to – how the Township was looking at the rezoning.

MR. STYER: Objection to the form.

A. That's correct.

Q. You said that you spoke with MacDonnell approximately three times. Do you know any of the dates that you spoke to MacDonnell?

A. No, I don't recall.

Q. Is there any documentation anywhere that you know of about the conversation or conversations with MacDonnell?

A. The only documentation would have been – possibly would have been in the minutes of the real estate committee meeting where I reported of my conversations to Mr. McDonnell or with Mr. McDonnell.

Q. Would you see those minutes after the meetings of the real estate committee?

A. Yes.

Q. Do you recall any reference by you to any conversation with MacDonnell?

A. I don't recall.

* * *

[120] talking about it.

A. Yes.

Q. Now, the fact that MacDonnell may have brought up the Waters piece, did that cause Genuardi's to go to the Waters piece?

A. No.

Q. Or were there other reasons?

A. There were other reasons. The other reasons were that Mr. MacDonnell advised that he didn't think that we were going to get the zoning at the 926 piece. And that's the reason we moved to the Waters piece, not because we thought it was a better site. It was because we couldn't get the site that we wanted and this was the only other one available.

Q. And to be specific, you couldn't get the rezoning at the site you wanted.

A. Correct.

Q. Now, did you ever make a determination as to whether a Genuardi's store could have gone onto the Thornbury Noble site as it was zoned?

A. Yes. We could have fit a store on there. It just would not have been a store that we could have operated successfully.

Q. And because you couldn't have operated it

* * *

EXHIBIT 15

THORNBURY TOWNSHIP, CHESTER COUNTY
BOARD OF SUPERVISORS

JULY 7, 1998

In attendance were Supervisors: Charles A. W. Wilson (Chairman), Patricia M. Dewey, Robert A. MacDonnell and William A. Schmidt; Robert Adams (Solicitor), Ronald J. Miller, Robert Eichman (PC), D.J. Tindall (P&R) and Mahlon Rossiter (Township Manager).

Mrs. Dewey called the meeting to order at 7:30 P.M. and led the Pledge of Allegiance.

Minutes Approval – A motion was made and seconded (WS/RM) to approve the minutes of meeting held June 16, 1998. Mrs. Dewey in favor. Mr. Wilson arrived after the motion.

Goose Creek Grill

Mrs. Dewey announced that any resident that returned the township survey is eligible for the for the complimentary dinner drawing at the Goose Creek Grill. Mrs. Tindall drew the name of Raymond Heinzelmann a resident at 455 Timberline Trail for the dinner compliments of the owners of the restaurant.

PennDOT Agility Program – Resolution 1998-13

Mr. Schmidt stated that the purpose of the Agility project is to develop a relationship between local governments and PennDOT by sharing services. Municipal employees may perform work for PennDOT in exchange for work on Township roads. Mr. Schmidt noted that the Agility

program applies more to larger townships. The state is looking for unanimous cooperation and there is no cost to Thornbury. A motion was made and seconded (WS/RM) to approve Resolution 1998-13 and the Agility Agreement. Mrs. Dewey in favor.

Springhouse at Brandywine – Escrow Release #3

A motion was made and seconded (RM/WS) to approve Yerkes Associates' (YA) recommendation to release $12,758.25. Total released to date is $464,928.85. This represents 39% of the project security with $740,971.15 remaining. Mrs. Dewey in favor.

Open Space Fund

Mrs. Dewey proposed establishing an Open Space Acquisition Fund with 50% of the monies the Township receives from the developers "Per Unit Contribution". Mr. Schmidt suggested setting aside a portion of the funds, approximately $15,000, for maintenance of the open space. Mr. MacDonnell recommended setting up this fund as a separate line item now and talk about details later. A motion was made and seconded (RM/WS).

Treasurer's Report, Financial Statement & Bill List

A motion was made and seconded (RM./WS) to approve the Treasurer's Report, Financial Statement and Bill List. Mrs. Dewey in favor.

Announcement

Mrs. Dewey noted that the household hazardous waste collection in E. Brandywine was very successful. All residents should receive a copy of the flyer listing materials accepted at the collection centers prior to 10/10/98. Mrs. Dewey emphasized that water based latex paint is not hazardous material and should not be taken to the collection site and explained how to dispose of the paint.

Park & Recreation Commission (P&R)

Mrs. Dewey stated that P&R (1) Recommended the Army Corps of Engineers and YA look at the existing bridge structure at the Goose Creek Park before spending money for a new bridge. (2) Requested the West Chester United Soccer Club (WCUSC) provide a list of chemicals being used on the field. P&R asked the Township to send a letter to WCUSC requesting their compliance. (3) Request the Park Rules & Regulations Ordinance be posted at Squire Cheyney Farm for Propstoppers to observe and at the soccer field for WCUSC. Propstoppers hours of operation should be restricted between 9:00 A.M. and dusk. Mr. Adams asked Mr. Rossiter for a memo regarding the items to be incorporated into a lease for Propstoppers.

Repaving Bid

Mr. Schmidt informed the Board that the Township has advertised to go out to bid for resurfacing Thornbury Road (1,550 s.y.), Audubon Road (2,850 s.y.), Buck Lane (2,260 s.y.) and Surrey Road (2,260 s.y.). The bids will be opened at the Supervisors meeting on July 21, 1998 at 7:30 P.M. Specifications are available at the Township Office. Mr. Wilson arrived at 7:45 P.M.

Thornbury Noble (TN) (a/k/a) Commons at Thornbury

Allan P. Baumholtz (Developer), Jack Nilon, Esq. and Richard Dugan (Genuardi's) were present on behalf of Thornbury Noble. John Ciccarone, William Wagenmann and John Featherman, Esq. representatives of 1st National Bank of West Chester were also present.

Mr. Nilon stated that when a sketch plan was presented several months ago there were two sources of opposition: (1) The housekeeping of the shopping center was not up to code. All of these complaints have been addressed by TN. (2) The concern voiced by neighbors located on the perimeter of the site. The revised site plan and discussion with the neighbors have addressed most of the concerns. Mr. Baumholtz has taken over the responsibility of the project. Mr. MacDonnell commented that many residents are opposed to converting zoning from residential to commercial. Mr. Nilon replied that TN views the rezoning as a better land use plan. TN is asking for 50,000 s.f. for Genuardi's and 10,000 s.f. for Happy Harry's. There would be two buildings rather than a strip shopping center incorporating 20 stores.

Mr. Baumholtz stated that he will be the owner of TN if things work out. Mr. Baumholtz informed the Board that he purchased the Burdich property and has a long term tenant occupying the house. The Burdich property will be used as a permanent buffer between the residential and commercial area and the Burdich property will be deed restricted up front prohibiting any future change in zoning prior to construction. Mr. Baumholtz promised to pave the Eichman driveway, plant trees on Route 926, completely enclose the entire commercial development with landscaping. If the Board approves TN's plan the landscaping will

be completed before permits are issued and construction begins. Mr. Baumholtz stated that he is requesting 192' of additional commercial zoning that translates to 1,000 s.f. more in total retail area with two users in contrast to 20 users.

Mr. Wilson asked why TN cannot go with the original plan. Mr. Baumholtz responded that he can go with 59,000 s.f. usage but the proposal before the Board is lesser utilization of the site. Mr. Rossiter inquired if TN had considered the increased number of cars at Calista Grand Salon. More cars are using the salon than when it served as an office building. Mr. Baumholtz responded that the parking situation has been appraised and the 5 to 1 ratio complies. Mr. Wilson commented that the Acciavatti family promised that rezoning would never be requested again and the Chester County Planning Commission asked the Township not to move commercialism further east along Route 926. Mr. Dugan explained the reasoning for positioning the building further east relates to traffic flow. Mr. Wilson asked for comments from the neighbors bordering the site.

Ronald Giacinto of 1240 Surrey Road told the Board that he vehemently opposed the supermarket plan in January when presented on behalf of Mr. Acciavatti. Mr. Giacinto stated that this project, over the past 10 years, has had a tremendous impact on his health and family life. Now that this project is out of Mr. Acciavatti's hands, the plan presented by Mr. Baumholtz would be much better. Mr. Baumholtz is willing to Deed Restrict all issues up front. The neighbors would rather see this plan as opposed to a Pep Boys or strip shopping center. Mr. Giacinto stated he did not want a supermarket in the past but Genuardi's is a reputable organization and any problems he has can be

brought to the attention of Genuardi's representatives. Mr. Baumholtz and his people are doing what they said they were going to do. Mr. Giacinto asked the Board to consider moving back the commercial zoning.

Robert Eichman noted that no one has contacted him regarding tonight's proposal. Mr. Acciavatti had three obligations that were never fulfilled: (1) Driveway ownership promised but never delivered (2) Complete the resurfacing of his driveway and (3) Correct the drainage problem at the top of the driveway bordering Route 202. Mr. Eichman stated he would appreciate getting these items done up front, 8 to 10 years of waiting is long enough. Mr. Eichman noted that the area between Happy Harry's (as shown on the new plan) and the drainage basin is going to need a lot more screening. The basin was never lined and only cleaned twice during the past 10 years. Mr. Eichman recommended approval of the plan providing there is a Deed Restriction *up front* that nothing else can be built on this site. Mr. Baumholtz noted that he will have Barry Walsh (Engineer) respond to Mr. Eichman's comments.

Helen Ruszkay of 190 E. Street Road stated if the Board can guarantee the commercial rezoning will not go past the Burdich property then she agrees with Mr. Eichman and Mr. Giacinto that it is a better plan. Mrs. Ruszkay expressed concern about additional traffic along Route 926 as a result of the supermarket, especially at rush hour. Mr. Eichman stated the traffic headed west on Route 926 in the afternoon is a problem and recommended looking into an additional left turn lane. Mr. Wilson noted that a traffic study would be necessary if the plan goes forward. Mr. Wilson asked Mr. Baumholtz for a copy of the sketch plan so that the township engineer could evaluate the proposal.

The representatives from 1st National Bank of West Chester stated they have been concerned and embarrassed by the conditions at the Commons. Mr. Wagenmann noted that they intend to keep the bank at this location and are there for the long haul. The representatives from the bank noted that Genuardi's proposal is a very attractive plan and urged the Board's approval. Mr. Ciccarone commented that he is in favor of the plan as long as the parking is adequate. Arthur Wood of Philadelphia was present to endorse Allan Baumholtz as being a very reputable developer. It was recommended a land planner review the parking configurations.

Mr. Schmidt asked if there is any interest in helping the township with open space to compensate for loss of residential zoning. Mr. Nilon replied that if there are Ordinances within the Township asking for a contribution toward acquiring open space it would be considered. Mr. MacDonnell stated that contributions to the Township have been made voluntarily. TN is asking this Board to intensify the use of the property and this Board desires to preserve additional open space to compensate for the loss to the Township. Mr. Wilson thanked everyone and Stated that the Supervisors will give this issue due consideration.

Public Comment

Mr. Giacinto requested that – prior to the repaving of Surrey Road if a drainage problem at the end of the cul-de-sac could be addressed. Mr. Schmidt responded that he will ask Neff Construction to take a look to determine if the drainage problem can be incorporated into resurfacing project.

Adjournment

A motion was made, seconded (WS/PD) and unanimously carried to adjourn at 9:10 P.M.

Respectfully submitted,

Constance Dulin
Township Manager

EXHIBIT 16

[LOGO]

GENUARDIS
FAMILY MARKETS

July 22, 1998

Thornbury Noble L & D
CYO Mr. Allan P. Baumholtz
1824 Spruce Street
Philadelphia, PA 19103

RE: Commons at Thornbury
Routes 202 and 926

Dar [sic] Mr. Baumholtz,

Your request to renegotiate the terms of the nonbinding letter of interest with Thornbury Noble L & D, for the above referenced site, was reviewed by the Real Estate Committee. As a result of that review, Genuardi's Family Markets Inc withdraws its letter of interest, dated 12-5-97, in this location. We wish you success in your development of this property.

Thank you for considering Genuardi's Family Markets.

Sincerely,

/s/ Richard Dugan
Rich Dugan

RD/kmb

EXHIBIT 17

THORNBURY TOWNSHIP, CHESTER COUNTY BOARD OF SUPERVISORS AUGUST 4, 1998

In attendance were Supervisors: Charles A. W. Wilson (Chairman), J. Christopher Lang (Vice-Chairman), Patricia M. Dewey, Robert A. MacDonnell and William A. Schmidt; Robert F. Adams (Solicitor), Robert Eichman (PC) and D.J. Tindall (P&R).

Mr. Wilson called the meeting to order at 7:30 P.M. and led the Pledge of Allegiance.

Minutes Approval – A motion was made and seconded (PD/WS) to approve the minutes of meeting held July 21, 1998. Mr. MacDonnell in favor. Mr. Wilson and Mr. Lang abstained due to their absence from the July 21st meeting.

Commons at Thornbury (CT) – Rezoning Request

Allan P. Baumholtz (Developer) and Carl Hanzelik (Attorney) were present on behalf of CT.

Mr. Wilson asked if there is any additional information since the July 7th meeting. The Board does not want to take any permanent action tonight but it might help the applicant know how the Board feels about the rezoning. Whatever discussion that takes place is not conclusive. Mr. Wilson polled each Supervisor asking them their opinion on extending the commercial zoning.

All members of the Board were not in favor of rezoning CT and cited the following reasons:

- Not convinced that a single large building has an advantage over any other commercial project.

- The parcel is large enough for success, it does not have to be expanded for a viable project
- Must be convinced that the proposal could justify the commercial expansion.
- There is a plan and that is what should stand.
- The Township should not make any changes unless there is some compelling reason.
- Pursue offices for the site.

The Board felt if there is a plan that Mr. Baumholtz wants to present they will be receptive to consider it and are open minded to whatever plan the applicant proposes. Mr. Wilson stated that the Board is sympathetic to the residents concerns.

Mr. Hanzelik stated that the Township is no longer dealing with Mr. Acciavatti. Mr. Baumholtz has done everything possible to accommodate the neighbors and Thornbury Township. The applicant is asking for a limited commercial rezoning of 192'. Mr. Baumholtz offered a form of protection to the residents when he purchased a property to buffer the residential and commercial areas to guarantee no further encroachment of commercial zoning. Mr. Hanzelik told the Supervisors that it is a very attractive plan and the neighbors support this rezoning. The promise to berm and landscape is welcome. Mr. Hanzelik asked if a shopping center is better than a first class outfit like Genuardi Markets.

Mr. Baumholtz stated that Mr. Wilson, at one time, was very much in favor of rezoning and now is not. Mr. Baumholtz told the Board that a strip shopping center will attract transients, create more traffic, and require more water and sewer. Mr. MacDonnell disagreed that a strip

center of this size would attract more traffic than a supermarket. Water and sewer are not a critical issue for a strip center and common sense would dictate using one trash hauler. Comparing the size of the market that requires expanding commercial, leads me to conclude that strip center is a better proposal. The Board agreed that proper landscaping between the neighbors and CT might be beneficial, but they did not see any benefits in expanding the commercial zoning to build a supermarket. Mr. Hanzelik asked if there is anything that Mr. Baumholtz could submit that might persuade the Supervisors to change their minds. Mr. MacDonnell replied, if Mr. Baumholtz could prove it would be impossible to develop the property without expanding the size, the Board would re-evaluate the zoning request. Mr. Lang recommended a review of exactly what had been approved for CT.

Mr. Giacinto stated that the No. 1 thing the residents did not want was a strip shopping center and No. 2 was a supermarket. Mr. Giacinto told the Board he is very confused and dismayed that the site is going from an office center to a strip shopping center. The residents had never been made aware that the application was changed. Ten years later the residents are getting a strip shopping center on ten acres, ten years ago it was 4 acres. The surrounding residents do not want transient traffic or the smell of a Chinese restaurant. Mr. Wilson noted that there is no plan and recommended that Mr. Giacinto work with Mr. Baumholtz to help convince the Board to re-evaluate the rezoning request. Mr. Wilson thanked Mr. Baumholtz for his appearance, and stated that the Board looks forward to hearing from him.

Burning Ordinance

Mr. Adams distributed the proposed ordinance and noted it will amend Chapter 68 of the Township's "Burning Ordinance". It was the Board's understanding, based on the Fire Marshal's presentation 7/21/98 that the Township did not have a burning ordinance. The Board will review Chapter 68 in conjunction with the proposed ordinance and tabled any action at this time.

Westtown Township – Act 537 Plan Revision

Mr. Wilson stated that Westtown's sewage treatment plant will service homes in Westtown that are north of Johnny's Way and east of Walnut Hill Road and does not abut Thornbury Township. The only impact to Thornbury will be water flow through the soccer field area via Chester Creek. A motion was made, seconded (CW/PD) and unanimously carried to write Westtown Township stating that Thornbury has no comment on their proposed Act 537 plan revision.

Springhouse at Brandywine – Escrow Release #4

A motion was made, seconded (RM/PD) and unanimously carried to approve the release of $150,815.50 from the established security. Total released to date is $615,744.35, this represents 51% of the security with $590,155.56 remaining.

Bill List – A motion was made, seconded (RM/WS) and unanimously carried to approve the Bill List with the exception of Check #5839.

EXHIBIT 18

707 Railroad Avenue • P.O. Box 68 •
Florence, New Jersey 08518 •
(609) 499-3900

SUPER *fresh*
FOOD MARKET

October 21, 1998

FAX (215)735-0931
REGULAR MAIL

Allan P. Baumholtz
1824 Spruce St.
Philadelphia, PA 19103

Re: Proposed Super Fresh
Route 202 and Route 926
Thornbury, PA

Mr. Baumholtz:

Outlined below is a summary of issues under which if agreement is reached on material terms (as such is herein after defined), I would be willing to request A&P corporate approval to proceed with a lease agreement:

Property:
Approximately seven (7) acres + located on the southeast quadrant of the intersection of Routes 202 and 926 in Thornbury, PA.

Landlord:
Thornbury Noble Ltd. Partnership

Tenant:
Super Fresh Food Markets, Inc.
P.O. Box 68
707 Railroad Avenue
Florence, NJ 08518

Conceptual Land Developmental Plan:
A retail shopping center containing a total gross leasable area ("GLA") of approximately 64,348 sq. ft. with on-site parking as shown on the site plan.

Demised Premises:
The Demised Premises shall be a one-story building containing a total area of approximately 48,000 sq. ft. plus a loading dock area.

Original Term:
Twenty (20) Years.

Option Terms:
Eight (8)- five (5) year options automatically exercised.

Option Notice:
Tenant must give Landlord written notice at least three hundred and sixty (360) days prior to the expiration of the then current term if it does *not* intend to renew.

Fixed Annual Rent:
As per Schedule "A", to be paid in twelve (12) equal monthly installments during each year the lease is in effect.

Rent Commencement Date:
Minimum rent under this lease shall commence on the earlier of (I) the date the tenant opens for business (II) the date of expiration of the "Tenant Fixturing Period."

Tenant Fixturing Period:
Landlord shall give Tenant written notice at least sixty (60) days prior to the date Landlord intends to deliver possession of the Building to Tenant with all of the Landlord's construction obligations for the Building completed thereto. Upon substantial completion and delivery of the

Building by Landlord to Tenant, Tenant shall have one hundred twenty (120) days ("Tenant Fixturing Period") to both (i) complete its store improvements, fixturing and stocking and (ii) open a fully merchandised supermarket. Tenant, at its sole cost, shall be responsible for completing the construction of the Demised Premises with regard to all items which are not included in or part of Landlord's Building Work (as hereinafter defined).

Utilities:
Tenant shall be solely responsible for the payment of all utility consumption and/or usage charges applicable to the Demised Premises.

Construction:
Landlord, at its sole cost, shall construct and deliver the Demised Premises in accordance with the plans and specifications delivered to Landlord ("Landlord's Building Work") by Tenant.

In addition to Landlord's cost to complete the Building, Landlord, at its sole cost, shall complete all site improvements in accordance with the Approved Plans and Specifications ("Landlord's Site Work").

Approvals:
Tenant at its sole cost and expense, shall provide all land use engineering plans and secure all standard governmental approvals, including Planning Board and Board of Supervisors, per the Township's ordinance for the contemplated improvements. Landlord shall allow the Tenant full rights to submit any and all applications to acquire such approvals. Landlord shall reimburse Tenant for all costs associated with the approval process, which shall include but not be limited to engineering, legal and other professional fees and shall be paid to Tenant on or before delivery

of possession. If Tenant is not successful in obtaining approvals, Landlord shall not be obligated to reimburse.

Permits:
Landlord, at its sole cost and expense, shall provide all building architectural plans and secure all building permits. The architectural plans shall be in accordance with our standard criteria plans and specifications which will be provided to the landlord.

Construction Completion:
Notwithstanding the aforestated, all construction shown on the site plan is to be constructed and completed at the same time Tenant's building is constructed and completed, including but not limited to the building, grading, paving, line striping, utility lines, drainage, lighting, landscaping, approaches, loading areas, platforms, and service roads as required. The out-parcels, if any, are to be in the positions shown on the site plan and the off-site improvements are to be completed, including but not limited to fully operational traffic lights, stacking lanes, acceleration lanes and deceleration lanes, as required.

Real Estate Taxes:
Tenant shall pay all real estate taxes (i.e. City/County, and School) applicable to its specific separately assessed parcel when due.

Common Area and Maintenance Insurance:
Tenant shall pay its proportionate share, based on aggregate GLA, of agreed upon common area maintenance costs for all common areas of the shopping center (collectively "CAM") as incurred or expended by Landlord on a calendar year basis. In addition to the foregoing CAM obligations, Tenant shall pay its proportionate share of Landlord's actual common area liability insurance costs

for all common areas of the shopping center and of Landlord's actual fire and extended casualty insurance costs for all buildings comprising a part of the shopping center, as the premiums for such insurance are incurred or expended by Landlord on a calendar year basis. Tenant's pro rata share of CAM charges shall be based upon the ratio of Tenant's building size to the square footage of all buildings shown on the approved site plan (whether or not constructed).

Repairs, Replacements and Maintenance:
Landlord, at its own cost, shall maintain all buildings throughout the shopping center in good order and condition. Landlord shall be responsible for all structural replacement and repairs to the Demised Premises, i.e. the roof, walls, footings and slab, for exterior or unexposed repairs and replacements and for parking lot repair and replacement. Landlord shall also be responsible for repairs, replacement and maintenance of the common area improvements which shall include but not be limited to parking lot, light stanchions, landscaping, snow removal and sweeping, which shall be reimbursable in CAM by Tenant (replacement of the roof and parking lot shall not be included in the CAM). For the first year of the term, the Landlord shall be responsible for the repair and replacement of the HVAC system. It is to be understood that in the event all warranties are not assigned to Tenant after the first year then the Landlord would remain responsible for both repair and replacement. In addition, Landlord agrees to restrip the parking lot every 36 months unless required sooner. Tenant shall be responsible for interior, non-structural repairs and replacements.

Alterations:
Tenant shall have the right, at Tenant's expense, to make interior structural or non-structural alterations, changes or improvements to the Demised Premises, provided such alterations shall not reduce the footprint and/or impair the structural integrity of the Demised Premises. Tenant to obtain Landlord's written consent prior to exterior alterations (except signage faces) not to be unreasonably withheld. Tenant to submit design drawings to Landlord for review when exterior alterations are being proposed.

Landlord agrees not to change the parking lot ratio/layout or make any other changes to the site plan or exterior decor of the shopping center, without Tenant's approval.

Negotiation of Lease Agreement:
(i) Within thirty (30) calendar days from the date of A&P Corporate Approval (the "Negotiation Period"), Landlord and Tenant shall proceed expeditiously, continuously and in good faith to negotiate and consummate a definitive Lease Agreement (the "Agreement") for the transaction covered hereby, which Agreement shall contain the terms set forth herein and such other essential and material terms, covenants, conditions and provisions (Material Terms) as shall be mutually agreed to by the respective parties and essential to the closing of the transaction. It is acknowledged by Landlord and Tenant that this letter sets forth only some of the Material Terms of the transaction and that additional Material Terms will need to be agreed upon before a Lease Agreement can be executed. Those remaining Material Terms include but are not limited to: development timing; subordination; recognition; non-disturbance and attornment; Tenant's rights with respect to Tenant's fixtures; Landlord warranties and representations; quiet enjoyment; force majeure; holding over;

Landlord' default; Tenant's default; damage or destruction; eminent domain; distraint: estoppel; notice provisions; mechanic's liens; right of first refusal and environmental issues.

(ii) Within thirty (30) days of a signed lease, Landlord's architect (which shall be approved by Tenant) shall prepare detailed plans, and specifications for Tenant's intended Building, which Building plan shall establish and/or set forth the specifications as shall be applicable to Landlord's construction obligations for the Demised Premises.

(iii) Neither party shall be bound to any transaction until such time as an Agreement has been executed. If Landlord and Tenant are unable to reach a complete and final Agreement, for any reason whatsoever, neither party shall have any claim against the other. Prior to the execution of an Agreement, either party may terminate negotiations without creating any obligation to the non-terminating party.

Restrictive Covenant.

Subject to existing uses and tenancies, Landlord shall not permit, except for the Demised Premises, any premises in the shopping center to be occupied for the sale of food for off-premises consumption, the sale of health and beauty aids, and/or the sale of prescription drugs. Landlord further agrees it shall not lease any portion of the shopping center for any noxious or offensive use or except as specifically set forth in the Lease Agreement, for manufacturing, or for use as a restaurant, bowling alley, funeral parlor, warehouse, office or non-retail use, except landlord shall be permitted to lease to a financial institution, real

estate office, financial service office, insurance agency sales office, or rental travel agency.

Use:
The Demised Premises may be used for a supermarket, pharmacy or for any lawful retail or service purpose. Nothing contained herein shall be deemed an obligation to continually operate any use from and within the Demised Premises. Landlord and Tenant shall negotiate recapture rights in the event that Tenant shall "Go Dark" for a period of twelve (12) months or more. Tenant shall be permitted to operate twenty-four (24) hours a day

Assignment/Sublet:
Tenant shall have the right without Landlord's consent to assign, sublet or license all or part of the Demised Premises provided that Tenant shall remain liable under the Lease.

Signs:
The center is identified by at least one (1) main pylon sign. Tenant has the right to use the top position for Tenant's sign. Tenant's sign shall be equal to or greater than the signs of the other major tenants of the center. If another pylon sign exists, Tenant shall also have the right to use the top position for its sign. Furthermore if an additional pylon is approved, Tenant shall have the right to the top position for its sign and reserves the right to approve the size of all other signs on the pylon.

Site Plan:
Any agreements are contingent upon site plan approval by the Tenant, including ongoing approval of changes whether required by the municipal authorities, or not, including but not limited to, building location, size, on and

off-site traffic controls, or signage that pertain to the present site.

Guarantee:
This lease will be guaranteed by The Great Atlantic and Pacific Tea Company Inc,

Transfer Tax:
Tenant shall pay for 100% of the transfer tax cost (if required) associated with the recording of the memorandum of lease.

Non Binding Proposal:
The terms and conditions contained herein are not intended to be contractual in nature and should not be considered binding on either Tenant, Landlord and/or their respective representatives. Landlord shall have no obligation to lease the Demised Premised [sic] to Tenant nor shall Tenant have any obligation to lease the Demised Premises from Landlord unless and until a written Agreement, in form and substance satisfactory to Landlord and Tenant, has been executed and delivered by and between the parties.

If the terms and conditions herein are acceptable, please sign where indicated below and return one original to my attention so I may present the deal for corporate approval.

Very truly yours,

SUPER FRESH FOOD
MARKETS, INC.

/s/ John Majczan
John Majczan
Director of Real Estate

JEM/mld
Enclosure

Agreed and approved
this 21 day of Oct, 19998 [/s/ AB]

[Company] Thornbury Noble, Ltd.

By /s/ Allan P. Baumholtz
(Name)
Its: Owner/Gen. Partner

Schedule "A"

DATE: 10-21-98

LOCATION: Rt. 202 and Rt. 926
Thornbury, PA

STORE SIZE: 48,000 sq. ft. +/-

YEARS	FIXED ANNUAL	PER SQUARE FOOT
Years 1-5	$720,000.00	$15.00
Years 6-10	$765,000.00	$16.00
Years 11-15	$816,00.00	$17.00
Years 18-20	$864,000.00	$18.00
Years 21-25 (Option 1)	$912,00.00	$19.00
Years 25-30 (Option 2)	$960,000.00	$20.00
Years 31-35 (Option 3)	$1,008,000.00	$21.00
Years 36-40 (Option 4)	$1,056,00.00	$22.00
Years 41-45 (Option 5)	$1,104,00.00	$23.00
Years 46-50 (Option 6)	$1,152,00.00	$24.00
Years 51-55 (Option 7)	$1,200,000.00	$25.00
Years 56-60 (Option 8)	$1,248,00.00	$26.00

EXHIBIT 19

707 Railroad Avenue • P.O. Box 68 •
Florence, New Jersey 08518 •
(609) 499-3900

SUPER *fresh*
FOOD MARKET

March 8, 1999

VIA FAX (610)459-3316
& REGULAR MAIL

Thornbury Noble
1845 Middletown Rd.
Glen Mills, PA 19103

Re: Proposed Super Fresh
Route 202 and Route 926
Thornbury, PA

Gentlemen,

Outlined below is a summary of issues under which if agreement is reached on material terms (as such is herein after defined), I would be willing to request A&P corporate approval to proceed with a lease agreement:

Property:
Approximately seven (7) acres + located on the southeast quadrant of the intersection of Routes 202 and 926 in Thornbury, PA.

Landlord:
Thornbury Noble Ltd. Partnership

Tenant:
Super Fresh Food Markets, Inc.
P.O. Box 68
707 Railroad Avenue
Florence, NJ 08518

Conceptual Land Developmental Plan:
A retail shopping center containing a total gross leasable area ("GLA") of approximately 64,348 sq. ft. with on-site parking as shown on the site plan.

Demised Premises:
The Demised Premises shall be a one-story building containing a total area of approximately 51,975 sq. ft. plus a loading dock area.

Original Term:
Twenty (20) Years.

Option Terms:
Eight (8)- five (5) year options automatically exercised.

Option Notice:
Tenant must give Landlord written notice at least three hundred and sixty (360) days prior to the expiration of the then current term if it does *not* intend to renew.

Fixed Annual Rent:
As per Schedule "A", to be paid in twelve (12) equal monthly installments during each year the lease is in effect.

Rent Commencement Date:
Minimum rent under this lease shall commence on the earlier of (I) the date the tenant opens for business (II) the date of expiration of the "Tenant Fixturing Period."

Tenant Fixturing Period:
Landlord shall give Tenant written notice at least sixty (60) days prior to the date Landlord intends to deliver possession of the Building to Tenant with all of the Landlord's construction obligations for the Building completed thereto. Upon substantial completion and delivery of the

Building by Landlord to Tenant, Tenant shalt have one hundred twenty (120) days ("Tenant Fixturing Period") to both (i) complete its store improvements, fixturing and stocking and (ii) open a fully merchandised supermarket. Tenant, at its sole cost, shall be responsible for completing the construction of the Demised Premises with regard to all items which are not included in or part of Landlord's Building Work (as hereinafter defined).

Utilities:
Tenant shall be solely responsible for the payment of all utility consumption and/or usage charges applicable to the Demised Premises.

Construction:
Landlord, at its sole cost, shall construct and deliver the Demised Premises in accordance with the plans and specifications delivered to Landlord ("Landlord's Building Work") by Tenant.

In addition to Landlord's cost to complete the Building, Landlord, at its sole cost, shall complete all site improvements in accordance with the Approved Plans and Specifications ("Landlord's Site Work").

Approvals:
Tenant at its sole cost and expense, shall provide all land use engineering plans and secure all standard governmental approvals, including Planning Board and Board of Supervisors, per the Township's ordinance for the contemplated improvements. Landlord shall allow the Tenant full rights to submit any and all applications to acquire such approvals. Landlord shall reimburse Tenant for all costs associated with the approval process, which shall include but not be limited to engineering, legal and other professional fees and shall be paid to Tenant on or before delivery of

possession. If Tenant is not successful in obtaining approvals, Landlord shall not be obligated to reimburse.

If the lease is not fully executed within 60 days of the date hereof, Landlord shall reimburse Super Fresh 50% of the cost expended. However, if Landlord or any related party subsequently develops the project and Super Fresh is not a tenant, Super Fresh will be reimbursed 100% of the costs.

Permits:
Landlord, at its sole cost and expense, shall provide all building architectural plans and secure all building permits. The architectural plans shall be in accordance with our standard criteria plans and specifications which will be provided to the landlord.

Construction Completion:
Notwithstanding the aforestated, all construction shown on the site plan is to be constructed and completed at the same time Tenant's building is constructed and completed, including but not limited to the building, grading, paving, line striping, utility lines, drainage, lighting, landscaping, approaches, loading areas, platforms, and service roads as required. The out-parcels, if any, are to be in the positions shown on the site plan and the off-site improvements are to be completed, including but not limited to fully operational traffic lights, stacking lanes, acceleration lanes and deceleration lanes, as required.

Real Estate Taxes:
Tenant shall pay all real estate taxes (i.e. City/County, and School) applicable to its specific separately assessed parcel when due.

Common Area and Maintenance Insurance:
Tenant shall pay its proportionate share, based on aggregate GLA, of agreed upon common area maintenance costs for all common areas of the shopping center (collectively "CAM") as incurred or expended by Landlord on a calendar year basis. In addition to the foregoing CAM obligations, Tenant shall pay its proportionate share of Landlord's actual common area liability insurance costs for all common areas of the shopping center and of Landlord's actual fire and extended casualty insurance costs for all buildings comprising a part of the shopping center, as the premiums for such insurance are incurred or expended by Landlord on a calendar year basis. Tenant's pro rata share of CAM charges shall be based upon the ratio of Tenant's building size to the square footage of all buildings shown on the approved site plan (whether or not constructed).

Repairs, Replacements and Maintenance:
Landlord, at its own cost, shall maintain all buildings throughout the shopping center in good order and condition. Landlord shall be responsible for all structural replacement and repairs to the Demised Premises, i.e. the roof, walls, footings and slab, for exterior or unexposed repairs and replacements and for parking lot repair and replacement. Landlord shall also be responsible for repairs, replacement and maintenance of the common area improvements which shall include but not be limited to parking lot, light stanchions, landscaping, snow removal and sweeping, which shall be reimbursable in CAM by Tenant (replacement of the roof and parking lot shall not be included in the CAM). For the first year of the term, the Landlord shall be responsible for the repair and replacement of the HVAC system. It is to be understood that in

the event all warranties are not assigned to Tenant after the first year then the Landlord would remain responsible for both repair and replacement. In addition, Landlord agrees to reshape the parking lot every 36 months unless required sooner. Tenant shall be responsible for interior, non-structural repairs and replacements.

Alterations:
Tenant shall have the right, at Tenant's expense, to make interior structural or non-structural alterations, changes or improvements to the Demised Premises, provided such alterations shall not reduce the footprint and/or impair the structural integrity of the Demised Premises. Tenant to obtain Landlord's written consent prior to exterior alterations (except signage faces) not to be unreasonably withheld. Tenant to submit design drawings to Landlord for review when exterior alterations are being proposed.

Landlord agrees not to change the parking lot ratio/layout or make any other changes to the site plan or exterior decor of the shopping center, without Tenant's approval.

Negotiation of Lease Agreement:
(i) Within thirty (30) calendar days from the date of A&P Corporate Approval (the "Negotiation Period"), Landlord and Tenant shall proceed expeditiously, continuously and in good faith to negotiate and consummate a definitive Lease Agreement (the "Agreement") for the transaction covered hereby, which Agreement shall contain the terms set forth herein and such other essential and material terms, covenants, conditions and provisions (Material Terms) as shall be mutually agreed to by the respective parties and essential to the closing of the transaction. It is acknowledged by Landlord and Tenant that this letter sets forth only some of the Material Terms of the transaction

and that additional Material Terms will need to be agreed upon before a Lease Agreement can be executed. Those remaining Material Terms include but are not limited to: development timing; subordination; recognition; non-disturbance and attornment; Tenant's rights with respect to Tenant's fixtures; Landlord warranties and representations; quiet enjoyment; force majeure; holding over; Landlord' default; Tenant's default; damage or destruction; eminent domain; distraint: estoppel; notice provisions; mechanic's liens: right of first refusal and environmental issues.

(ii) Within thirty (30) days of a signed lease, Landlord's architect (which shall be approved by Tenant) shall prepare detailed plans, and specifications for Tenant's intended Building, which Building plan shall establish and/or set forth the specifications as shall be applicable to Landlord's construction obligations for the Demised Premises.

(iii) Neither party shall be bound to any transaction until such time as an Agreement has been executed. If Landlord and Tenant are unable to reach a complete and final Agreement, for any reason whatsoever, neither party shall have any claim against the other. Prior to the execution of an Agreement, either party may terminate negotiations without creating any obligation to the non-terminating party.

Restrictive Covenant:
Subject to existing uses and tenancies, Landlord shall not permit, except for the Demised Premises, any premises in the shopping center to be occupied for the sale of food for

off-premises consumption, the sale of health and beauty aids, and/or the sale of prescription drugs. Landlord further agrees it shall not lease any portion of the shopping center for any noxious or offensive use or except as specifically set forth in the Lease Agreement, for manufacturing, or for use as a restaurant, bowling alley, funeral parlor, warehouse, office or non-retail use, except landlord shall be permitted to lease to a financial institution, real estate office, financial service office, insurance agency sales office, or rental travel agency.

Use:
The Demised Premises may be used for a supermarket, pharmacy or for any lawful retail or service purpose. Nothing contained herein shall be deemed an obligation to continually operate any use from and within the Demised Premises. Landlord and Tenant shall negotiate recapture rights in the event that Tenant shall "Go Dark" for a period of twelve (12) months or more. Tenant shall be permitted to operate twenty-four (24) hours a day

Assignment/Sublet:
Tenant shall have the right without Landlord's consent to assign, sublet or license all or part of the Demised Premises provided that Tenant shall remain liable under the Lease.

Signs:
The center is identified by at least one (1) main pylon sign. Tenant has the right to use the top position for Tenant's sign. Tenant's sign shall be equal to or greater than the signs of the other major tenants of the center. If another pylon sign exists, Tenant shall also have the right to use

the top position for its sign. Furthermore if an additional pylon is approved, Tenant shall have the right to the top position for its sign and reserves the right to approve the size of all other signs on the pylon.

Site Plan:
Any agreements are contingent upon site plan approval by the Tenant, including ongoing approval of changes whether required by the municipal authorities, or not, including but not limited to, building location, size, on and off-site traffic controls, or signage that pertain to the present site.

Guarantee:
This lease will be guaranteed by The Great Atlantic and Pacific Tea Company Inc.

Transfer Tax:
Tenant shall pay for 100% of the transfer tax cost (if required) associated with the recording of the memorandum of lease.

Non Binding Proposal:
The terms and conditions contained herein are not intended to be contractual in nature and should not be considered binding on either Tenant, Landlord and/or their respective representatives. Landlord shall have no obligation to lease the Demised Premised [sic] to Tenant nor shall Tenant have any obligation to lease the Demised Premises from Landlord unless and until a written Agreement, in form and substance satisfactory to Landlord and Tenant, has been executed and delivered by and between the parties.

If the terms and conditions herein are acceptable, please sign where indicated below and return one original to my attention so I may present the deal for corporate approval.

Very truly yours,

SUPER FRESH FOOD MARKETS, INC.

/s/ John Majczan
John Majczan
Director of Real Estate

JEM/mld
Enclosure

Agreed and approved
this 8 day of March, 1999

Thornbury Noble

By /s/ Allan Baumholtz
(Name)

Its. _____

Schedule "A"

DATE: 3/8/99

LOCATION: Rt. 202 and Rt. 926
Thornbury, PA

STORE SIZE: 51,975 sq. ft. +/-

YEARS	FIXED ANNUAL	PER SQUARE FOOT
Years 1-5	$675,675.00	$13.00
Years 6-10	$688,668.75	$13.25
Years 11-15	$714,656.25	$13.75
Years 16-20	$740,643.75	$14.25
Years 21-25 (Option 1)	$766,631.25	$14.75
Years 26-30 (Option 2)	$792,618.75	$15.25

Years 31-35 (Option 3)	$818,606.25	$15.75
Years 36-40 (Option 4)	$844,593.75	$16.25
Years 41-45 (Option 5)	$870,581.25	$16.75
Years 46-50 (Option 6)	$896,568.75	$17.25
Years 51-55 (Option 7)	$922,556 25	$17.75
Years 56-60 (Option 8)	$948,543.75	$18.25

EXHIBIT 20

BEFORE THE BOARD OF SUPERVISORS OF THORNBURY TOWNSHIP, CHESTER COUNTY

IN RE: Application of Thornbury Noble, Ltd. for Amended Final Plan Approval or, in the alternative, for A Zoning Map Amendment

APPLICATION FOR AMENDED FINAL PLAN APPROVAL OR, IN THE ALTERNATIVE, FOR A ZONING MAP AMENDMENT

1. Applicant is Thornbury Noble, Ltd., a Pennsylvania Limited Partnership [hereinafter "Thornbury Noble"], with a principal office at 1121 North Providence Road, Media, PA 19063.

2. Thornbury Noble owns property consisting of 7± acres and located in the "B" Business zoning district on the southeast corner of the intersection of Routes 926 and 202 in Thornbury Township, Chester County, Pennsylvania [hereinafter "the Property"].

3. Thornbury Noble has secured approval of a final zoning and site plan, drawn by E. B. Walsh & Associates, Inc., dated January 27, 1993, last revised September 13, 1993, and approved by the Board of Supervisors on March 7, 1995 by ratification of an approval granted on October 5, 1993 [hereinafter "the Final Plan"].

4. Thornbury Noble wishes to develop the Property by construction thereon, in addition to the existing buildings and improvements, of a 50,000 square foot food market, which is a permitted use in the "B" Business District.

5. The construction of the food market as proposed by Thornbury Noble requires an amendment to the Final

Plan. A true and correct copy of a sketch plan of the proposed amended plan is attached hereto as Exhibit "A" and made part hereof.

6. In the alternative, and to provide a better site layout, Thornbury Noble seeks a rezoning of approximately 2 acres from A-Agricultural/Residential to B-Business.

7. The rezoning would allow construction on the Property, in addition to the existing buildings and improvements, of a 50,000 square foot food market and a 10,000 square foot drug store. A copy of the sketch plan for the rezoning alternative is attached hereto as Exhibit "B" and made part hereof.

8. The 2 acres sought to be rezoned abut the eastern boundary of the existing B-Business zoning district and are owned by Thornbury Noble.

9. In order to address any impact of the extension of the B-Business zoning district, and in order to assure no further extension of the B-Business zoning district to the east, Thornbury Noble will deed restrict the Berdich property, which abuts the eastern boundary line of the 2 acres that are the subject of this petition, from any non-residential development of any kind regardless of the zoning.

10. The rezoning alternative allows for a better interior flow of traffic than is provided on either the existing final plan or the amended final plan.

11. The rezoning will have no adverse impact upon the surrounding properties and, in fact, provides affirmative restrictions to prevent a further extension of the B-Business commercial zoning district.

WHEREFORE, Thornbury Noble requests that the Board of Supervisors amend the zoning map to rezone approximately 2 acres as aforesaid, or, in the alternative, to approve an amendment to the approved

Respectfully submitted,

/s/ Mary Ann Rossi
Mary Ann Rossi
FOX, ROTHSCHILD, O'BRIEN
& FRANKEL, LLP
Eagleview Corporate Center
760 Constitution Drive
Suite 104
P.O. Box 673
Exton, PA 19341-0673
(610) 458-7500

Date: October 6, 1998

EXHIBIT 23

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL ACTION

THORNBURY NOBLE, LIMITED	:	NO. 99-CV-6460
vs.	:	
THORNBURY TOWNSHIP, CHESTER COUNTY, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, the Members of the Board of Supervisors in their official Capacity: PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A.W. WILSON and ROBERT MacDONNELL	:	

Tuesday, July 31, 2001
Exton, Pennsylvania

Oral Deposition of ROBERT F. ADAMS, ESQUIRE taken in the Law Offices of FOX, ROTHSCHILD, O'BRIEN & FRANKEL, LLP., Eagleview corporate Center, 760 Constitution Drive, Exton, Pennsylvania, commencing at 10:15 a.m., on the above date, before Eileen S. Arrison, Professional Court Reporter and Commissioner of Deeds.

LOVE COURT REPORTING, INC.
1422 Chestnut Street, Suite 408 Philadelphia, PA. 19102
(215) 568-5599

[2] APPEARANCES:

FOX, ROTHSCHILD, O'BRIEN &
FRANKEL, LLP.
BY: CRAIG A. STYER, ESQUIRE
Eagleview Corporate Center
760 Constitution Drive
Exton, PA 19341-0673
(610) 458-7337
Counsel for Plaintiffs

SIANA & VAUGHN, LLP.
BY: ANDREW J. BELLWOAR, ESQUIRE
Ludwigs Corner Professional Center
961 Pottstown Pike
P.O. Box 630
Exton, PA 19341
(610) 321-5500
Counsel for the Defendants

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
BY: JOHN P. GONZALES, ESQUIRE
One Montgomery Plaza, Suite 1002
Norristown, PA 19401-4814
(610) 292-4470
Counsel for Thornbury Township

[3] INDEX

NAME		PAGE
ROBERT F. ADAMS By MR. STYER		7
		EXHIBITS
Adams-1	Ordinance 1989-5	22
Adams-2	Application for amended final Plan Approval or, in the Alternative, for a Zoning Map Amendment	102

[4] DEPOSITION SUPPORT INDEX

DIRECTIONS NOT TO ANSWER:
PAGES: None

REQUESTS FOR DOCUMENTS OR INFORMATION:
PAGES: None

STIPULATIONS AND/OR STATEMENTS:
PAGES: 5,

MARKED QUESTIONS:
PAGES: None

* * *

[97] THE WITNESS: That's right.

BY MR. STYER:

Q. It's referenced that Mrs. Rossi told the Board that they were coming in with a – that they were presenting two plans to the Board, one plan showing the market on the existing commercial site and a second plan with the two-acre rezoning.

Do you recall that there were two plans submitted to the Board?

A. I do recall that and I think she sent me a set of those, which I think accompanied a petition for rezoning – maybe – it accompanied – there was some – they were in manila envelops [sic], the two plans stuck in, Exhibits A and B and I think there was a cover petition of some kind asking for that rezoning and a modification of their application in some respect.

Q. There's a statement that Mr. MacDonnell recommended the applicant go back to the Planning Commission and go through the regular land development process.

Do you recall Mr. MacDonnell making [98] that statement at the time?

A. I don't.

Q. Do you know why Mr. MacDonnell would make such a statement at that time?

MR. BELLWOAR: Objection.

THE WITNESS: I don't know why he made it – if he made it.

MR. STYER: Well, in the context of what was being presented, I mean, as a Solicitor and just in the regular land development process that's going on here.

MR. BELLWOAR: What's the question?

MR. STYER: Why would he have recommended that the applicant go back to Planning Commission?

MR. BELLWOAR: Objection.

THE WITNESS: If he didn't it – and I wouldn't be surprised if he said that – the Board of Supervisors

relies on the Planning Commission to evaluate proposals of this type.

MR. STYER: Of which type?

THE WITNESS: Of the type that –

MR. STYER: Does it require for [99] rezoning that the Planning Commission review it?

THE WITNESS: Well, she asked that the Board reconsider its position on rezoning. I think she understood at that point that the Board wasn't inclined to do it. And one of the plans that she submitted in this – if I'm correctly recalling – one of the plans that she submitted showed a supermarket on the property without the rezoning, the other one showed it with the rezoning. And I believe that Mr. MacDonnell's comment would have been directed at the plan without the rezoning which showed the supermarket and he's saying "Take it to the Planning Commission" – an entirely appropriate comment.

MR. STYER: Is that an appropriate comment if it's an amended final plan?

MR. BELLWOAR: Objection.

THE WITNESS: Sure it is. I don't concede that it was.

MR. STYER: I understand that but [100] I'm saying –

THE WITNESS: But it's an appropriate comment whether it was a new plan or an amended plan – although she had never filed any formal application. I think this was simply a sketch plan, a concept that she had presented to the Supervisors.

And if I could see it, I could recall what the cover sheet said. I don't remember exactly what she had submitted to us before that time.

BY MR. STYER:

Q. You're saying that she didn't file a formal application?

A. I don't think she filed a fully-engineered preliminary plan showing either of these concepts. I think she was showing the feasibility of developing the site with the additional rezoning and without the rezoning. And her position was that she could do it, she could put a supermarket on that site without a rezoning and she had a plan that demonstrated that in her opinion.

[101] Q. How was it that you recall that she didn't file an application?

MR. BELLWOAR: Application for point of impact?

THE WITNESS: I don't think it was a formal submission. I think it was a sketch plan. I don't think it was a formal land development application submitted to amend – but I'd have to see it.

I can tell you that what accompanied that submission, as I recall it, was a sketch plan. It didn't have any of the normal engineering detail that you would see in a land development plan.

BY MR. STYER:

Q. So the plan itself was not what you would have expected to receive for a formal land development plan. Is that what you're saying?

A. That's my recollection. And, as I said, if I could see the documents I might be able to [sic] from a more enlightened point of view.

Q. Then give me five minutes and let me see if I can find them. Okay?

A. Sure.

[102] MR. STYER: Off the record.

(At this time a brief recess was taken after which the testimony continued as follows:)

MR. STYER: Mark this as Adams-2.

(At this time the court reporter marked the exhibit as Adams-2).

BY MR. STYER:

Q. Mr. Adams, I've shown what we've marked as Adams-2. We were talking about the application that was submitted by Mary Ann Rossi on behalf of Thornbury Noble. Given to you is Adams-2, a five-paged document with a cover letter, next is Application for Amended Final Plan or, in the Alternative, for A Zoning Map Amendment, and then there's an Act 247 County Referral.

A. Right.

Q. Now, that's the application that was submitted by Ms. Rossi, correct?

A. That's the one I was referring to that I couldn't recall explicitly how it was captioned and what relief it requested. It was submitted about a month prior to the November 3rd [103] meeting that you were just talking to me about.

Q. And it also had with it – you had mentioned and obviously I didn't make copies – there were two envelopes that had plans with them.

A. That's right.

MR. BELLWOAR: Exhibits A and B, I think they're referenced.

MR. STYER: Correct.

BY MR. STYER:

Q. This application was accepted by the Township, correct?

A. I believe so.

Q. And it was referred to the Chester County Planning Commission as well.

A. Well, I can see that a referral form accompanied it. I don't know if it actually was referred or I don't know if any fees were paid with this submission.

Q. Well, there is a – I'll represent to you that there is a recommendation by the Chester County Planning Commission that references that.

A. Okay.

[104] Q. So does that help you –

A. Yeah. I assume the Township referred it. That's what this form is for, the Act 247 County Referral Form.

Q. Earlier you had talked about that there was no formal application filed. Does this change your view that there was an application filed in fact?

A. My opinion is that this is still not a formal land development application. I think Mary Ann Rossi was still testing the waters, trying to find out if the Board would approve the rezoning. This is called an Application for Amended Final Plan Approval or, in the Alternative, a Zoning Map Amendment. Clearly the alternative relief is what she wanted. The application for Final Plan Approval is depicted in Exhibit A in one of those envelopes.

I think if you look at that you're going to see that it's simply a sketch plan, which is not a formal submission, which would have normally been required for any kind of plan amendment.

Q. I'm sorry. You were saying that it [105] would have been required for an amendment? What would have been required for an amendment?

A. I think Mary Ann Rossi submitted a sketch plan just to try once again to see if the Supervisors would consider the alternative relief of the zoning map amendment. And the reason – I don't know – do you have the plan –

Q. Yes.

A. – the Exhibit A plan, and then I can demonstrate what I what I think is the case.

Q. I don't know that there's any dispute that this is a sketch plan.

A. Right. Well, I can tell you that the Supervisors would not be in a position to grant any kind of approval based upon a submission of this quality.

MR. BELLWOAR: And you're referencing Exhibit A of the October 6th submission by Mary Ann Rossi.

THE WITNESS: Right. It's called Sketch II and it's Exhibit A. And I think it's submitted simply to demonstrate that the property could be developed under the present zoning configuration – the then [106] present zoning configuration – with a 50,000 square foot food store.

I'm not sure that was ever demonstrated to the Township and I expect that's why Mr. MacDonnell said: Take it to the Planning Commission.

BY MR. STYER:

Q. Obviously the Township did not reject the plan that was submitted, correct?

A. In my view there was no legal submission. It did not take action on this application to my knowledge. And Mary Ann Rossi never claimed any deemed approval or other rights as a consequence of our failure to adopt this plan. And we never had a hearing on the proposed rezoning which was her alternative relief.

Q. I'll get to that. There was no hearing though because the Board would not agree to a hearing, correct?

A. I believe the Board did not want to have a hearing on this because they weren't inclined to rezone it.

Q. And any request for a hearing or – well, there was a request for a hearing, correct?

[107] A. If that's what this application is, it does say in the Alternative for a Zoning Map Amendment. She

asked in the alternative that the Board approve an amendment to the final zoning to allow for a food store to rezone approximately two acres.

Q. And at the November 1998 meeting the Board stated that it was not inclined to grant the approval, correct, it was not going to grant the approval?

A. I'm not sure what the minutes say. Mary Ann obviously asked the Board at that meeting, according to the minutes, to reconsider its position on the rezoning. and I think she realized that she was – it was an uphill battle and she didn't press for the hearing.

Q. We'll get to this a little bit later, but am I correct that you took the position that this was not – what was proposed was not an amendment to the final plan?

MR. BELLWOAR: Are you saying what was proposed?

MR. STYER: What was proposed in the application.

[108] MR. BELLWOAR: Adams-2?

MR. STYER: Yes.

THE WITNESS: I considered it a new plan rather than an amendment. It's a matter of semantics, I guess, in one respect, but I considered it more than a simple amendment to an approved plan.

In any event, I don't consider the application to have been duly submitted as required by the Township. It was a sketch plan which doesn't require any action by the Supervisors. In other words, the submission of the sketch plan doesn't vest an applicant with any rights to approval.

May I add that she was free to submit a preliminary plan, a fully-engineered preliminary plan to depict the alternative of the food market on the property as it was then zoned, but that never occurred.

BY MR. STYER:

Q. That would have required a conditional use hearing, correct?

A. Well, it depends when she submitted

* * *

EXHIBIT 24

Yerkes

Yerkes Associates, Inc. Consulting Engineers/Landscape Architects/Surveyors

October 13, 1998

Thornbury Township
Planning Commission
8 Township Drive
Cheyney, Pennsylvania 19319

RE: The Commons At Thornbury-Thornbury Noble
Amended Final Plan Application Review

Dear Commission Members:

The following plans prepared by Edward B. Walsh and Associates, Inc. have been submitted to this office for review:

Sketch II-Exhibit 'A', Sheet 1 of 1, last revised March 11, 1998

Sketch Plan-Exhibit 'B', Sheet 1 of 1, dated March 11, 1998

The plans depict the construction of a 50,000 square foot food market building within the Commons At Thornbury commercial center on the southeast corner of the Routes 926 and 202 intersection. Exhibit "B" also depicts the construction of a 10,000 square foot drug store. The purpose of exhibit 'A' is to amend the final plan approved by the Township on March 7, 1995 to allow the construction of the food market building. The purpose of exhibit 'B' is to amend the approved final plan to allow the construction of a 50,000 square foot food market building and a 10,000 square foot drug store in conjunction with the

expansion of the B Business Zoning District east along Route 926 and south along, Route 202.

The following comments are offered for your consideration:

Exhibit "A"

Zoning Ordinance

1. *Section 155-37.C.(4)* – Along each side or rear property line which directly abuts a residence district in the Township there shall be a buffer planting strip not less than 50 feet in width. The buffer planting strip shall be a landscaped area free of structures, materials, and vehicular parking. The sketch plan should be revised to depict the buffer planting area and to relocate any encroachment into the buffer.

2. *Section 155-37.C(5)* – The Board of Supervisors may permit all or a portion of the buffer planting strip to be located within the abutting residence district where the abutting residential property is owned or controlled by the business district property owner. In the event that the Board of Supervisors permits the buffer planting strip to be so located, it shall require that appropriate perpetual easements and restrictions be placed upon that portion of the abutting residential property being used for the buffer planting strip. The Township should determine whether placement of the buffer planting strip within the abutting residential property is acceptable.

3. *Section 155-37.F* – The greatest dimension of a building shall not exceed 160 feet in length or depth. The maximum dimensions of the proposed food store building are 224 feet wide by 250 feet long. A special exception appears to be necessary to allow the dimensions of the proposed food market building.

4. *Section 155-39.D(1)* – No loading berth for vehicles of more than two-ton capacity shall be located less than 100 feet from any residential district. The proposed loading area location should be revised for compliance with this section.

5. *Section 155-39.D(3)* – Each loading berth shall be designed with appropriate means of vehicular access to an interior. drive in a manner which will least interfere with traffic movements:. A plan indicating truck traffic access and circulation should be included with the sketch plan submission:

6. *Section 155-39.E(2)* – The parking requirements table should be revised to account for the parking requirements associated with the existing beauty salon and the 20,000 square feet of the food market store not utilized for sales. Based on Section 155-39.E(2h) it appears that these uses require one parking space for each 200 square feet of floor area.

7. *Section 155-39.G* – Interior drives shall be designed so as to prevent blockage of vehicles entering or leaving the site. The Route 926 exit appears to provide sufficient length for only 4 or 5 vehicles staged in the left turn lane without blocking the driveway along the east side of the food market building. The Route 926 exit should be revised as necessary to allow a sufficiently long staging area.

8. *Sections 155-39.G(3) and (4)* – The location of a fire lane easement should be indicated on the plan. Fire lane easements shall have a minimum unobstructed right-of-way with of 40 feet and, for fire lane easements which curve, turn or change directions, shall provide a minimum turning radius of 55 feet.

Exhibit 'B'

Zoning Ordinance

9. (See Comment #1)

10. (See Comment #2)

11. (See Comment #3)

12. (See Comment #6)

13. (See Comment #8)

General Comments

14. It is recommended that an existing features plan indicating building setback lines, zoning boundaries, buffer planting areas, parking spaces, building coverage, and impervious coverage be included as part of the application.

15. Proposed zoning boundary lines should be added to sketch plan "B".

16. A conceptual stormwater management plan should be included with each sketch plan.

17. A traffic impact study may be necessary to determine if any modifications to the traffic signals at the Routes 202 and 926 intersection and the entrance at Route 926 are necessary.

The above comments must be satisfactorily addressed. during further development of either sketch plan. Please call if you have any questions.

Very truly yours,

YERKES ASSOCIATES, INC.

/s/ Michael Conrad
Michael Conrad, P.E.

MC/dmk
cc: Mahlon Rossiter
Mary Ann Rossi

EXHIBIT 25

THORNBURY TOWNSHIP, CHESTER COUNTY
PLANNING COMMISSION
MINUTES
OCTOBER 14, 1998

In attendance were Planning Commission (PC) members: John Stevenson (Vice-Chairman), Barbara Iacovelli (Secretary), Robert Eichnman [sic], Ray Heinzelmann, Michael Sweeney, Mahlon Rossiter (Township Manager), and Robert Adams, Esq. Township Solicitor. Also in attendance were Mike Conrad, Yerkes Associates, Mary Ann Rossi of Fox, Rothschild, O'Brien & Frankel, LLP, Allan Baumholtz, Owner, Thornbury Noble, and Ron Giacinto, Resident.

Mr. Stevenson called the meeting to order at 7:35 p.m. and led the Pledge of Allegiance.

Minutes Approval – The minutes were postponed until the November meeting.

Old Business –
Bridlewood Farm – Phase 4: The PC was presented with a sketch for Phase 4 and Mr. Rossiter stated that the PC has everything concerning this matter. He asked if the PC would consider a second session this month to review this sketch and that this sketch was a preliminary before the final of Phase 4 and that nothing had been changed. Mrs. Iacovelli suggested to have everything complete for the November agenda. Mr. Stevenson noted that November's meeting is on Veteran's Day and a request was made to change it to Thursday, November 12. Mrs. Coletta will poll the members and if all can attend, Mr. Rossiter will advertise the change.

New Business –

Thornbury Noble: Mary Ann Rossi presented two Unofficial Sketch plans for an Amended Final Plan. Exhibit A – which does not involve rezoning; and Exhibit B – which requires a zoning change. A 75 minute discussion followed, including the change in zoning, the approval needs from the township and comments from residents. Mrs. Rossi stated that her client is ready to go ahead with the final plan that has been approved and that the Burdich property has been acquired by Thornbury Noble to remain residential in order to prevent "commercial creep" along Rt. 926. Mrs. Iacovelli asked for clarification of the two residential lots east of the shopping center. Mrs. Rossi stated that of the two properties, the first house is in the plan and the second one (the Burdich property) is deed restricted. Mr. Stevenson noted that the first house is deed restricted property for on-site sewage only. Mrs. Rossi stated that they are still considering rezoning the residential property shown on the existing plan but the adjacent property would not be rezoned from its residential zoning and would restrict it from commercial use. Mr. Adams stated that the reason for the deed restriction is to protect it from future rezoning. Mrs. Rossi advised that the Burdich property is currently under lease as a residence. Mr. Eichman mentioned the detaining basin and retention wall, stating it is there to protect the land from deteriorating, to protect neighboring children, and it would also be a secured area with no infringement on the southern residential lot.

A discussion followed concerning the proposed drugstore, its position on the site and the possibility of turning it and screening it from the residential community. Mrs. Rossi indicated this would not be a problem and her client is

committed to screening. Mr. Stevenson asked if there would be a single or double drive-in lane for the drugstore, Mrs. Rossi replied there were plans for a single drive-in lane. Concerning the lot to the east, Mr. Stevenson stated there is parking space for about 30 cars; the drive around goes on to what is now the restricted area, the existing sewage field, thus the property has been encroached upon in two different ways – that is commercial use of a residential property. Mrs. Rossi stated there is enough setback, adjacent residential property is already allowed to be used for accessory support for this plan and there is a detention basis to support adjacent property. She stated that steps have been taken already to allow these two properties to be used as an accessory to a commercial property.

Mr. Stevenson stated that it was very concise how this property was to be used and so far the past owner has not complied with any of those restrictions. He stated that he wants everyone on the PC to be clear as to what these options show since Thornbury Noble will be looking for some sort of variance or exception to accomplish their plan. Mrs. Iacovelli asked for the difference between Exhibits A & B. Mrs. Rossi stated that the superior difference is the circulation. With Exhibit B you the entrance and the main building is on the left. Mr. Stevenson mentioned public sewer and Mr. Baumholtz said, "Public sewer is there now and everyday capacity requirement is probably the same as that approved for the strip shopping center already approved. Mrs. Rossi will get a list of options regarding sewage. Mrs. Iacovelli asked the amount of green space on Exhibit B and loading for the proposed grocery store. Mr. Baumholtz explained that the track

behind the building would be 25' before the Burdich line, then come to Rt. 926 and out.

Mr. Stevenson stated they have already added to the impervious plan for 1000' and questions what kind of assurances they would be giving the township that they would redesign the parking lot line, the retention basin and increase capacity of the detention basin. A discussion followed concerning the septic system. Mr. Stevenson stated that the ground water issue at the adjacent properties is at the forefront for resolving this system. Bridlewood was mentioned as a good example. Mr. Adams noted the supervisors do not like Exhibit A; he feels Exhibit B is better but could be improved; asked if Exhibit A could be done; but feels it is a waste of time since the BOS does not want to approve this one. Mr. Stevenson stated that regardless of which plan, all these issues that have to be resolved. Mrs. Rossi stated they would line the basin, satisfy Yerkes for storm water, etc., but they have to know which plan the township would consider in order to go forward and afterwards, the engineers would be involved. Mrs. Rossi stated her purpose in being here tonight, and at the BOS in November, is to see if rezoning would be allowed to permit her client to proceed. Mr. Stevenson stated these two exhibits are lopsided and he would prefer there be a better picture of Exhibit A.

Discussion followed along the same lines of rezoning the Burdich property and plans to protect it from commercial development. Mr. Adams stated if the client is not concerned about the sewer then probably the property would be used for parking. Mrs. Iacovelli stated that in her opinion, the Burdich property cannot be used for anything except a tile field and the setback for the grocery store is to be 50' – in other words, parking *goes* in Exhibit A. Mrs.

Rossi asked Ron Giacinto to comment on the pros and cons of the two plans from his perspective and that of his neighbors. Mr. Giacinto discussed the plans and the effect on his neighborhood. Mr. Eichman stated he wants the detention basin done properly and maintained properly. Secondly, he questions why a drugstore could not be worked into Plan A. Mrs. Iacovelli asked how these two plans gel with our impervious surface specifications.

Mr. Stevenson asked Mrs. Rossi what would be helpful at this point and Mrs. Rossi stated that it would be helpful to have a vote from the PC. Mr. Stevenson stated that the Burdich property is part of this and no matter which plan you go with, it gets deed restricted. Secondly, stay out of the existing residential property that already has the sewage on it. Thirdly, if you turn the store 90 degrees and still have the side loading on the east side and keep the berms, load off the end, it solves a myriad of problems, but you lose the drugstore. Also, he would like to see another plan that expresses the desires of the BOS, one that would be a better compromise. Mr. Adams stated he doesn't like Plan A and there are problems with it concerning compliance but before Mrs. Rossi goes before the BOS, an alternative plan might help. He further stated that from a planning perspective, Plan B is better, but the BOS' objection had to do with the traffic, the idea of bridging the line that is residential. Mrs. Rossi stated there is no reason to offer anything on Burdich since an Exhibit A can be engineered to comply with existing ordinances, the Burdich property would only be retained to secure rezoning, and if there is a Plan C, it will not include the Burdich property. Mr. Stevenson stated that would not be much of an incentive for the township.

Mr. Stevenson requested comments from the PC. Mr. Conrad stated that the problem seems to be access off Street Road and that the entrance off Rt.202 would provide better access for truck delivery. Mr. Adams stated it goes a long way to discuss the Rt. 926 entrance. Mr. Sweeney stated that he would like to see a great Plan A; he prefers Plan B but would like to see a credible exhibit of Plan A. Even then, he feels he would probably still lean toward Plan B. Mr. Adams stated it was more important to come up with a compromising Plan A. Mr. Eichman stated he agrees 99% with Mr. Sweeney but if possible, would prefer Plan B. Mrs. Iacovelli stated she was offended by the appearance of the two plans – one being green and the other, not green, but appreciative that Mrs. Rossi was here to present a sketch. She also stated that the PC wants the best, most viable use for this corner – the PC wants it to survive. However, it is to be buffered, well planted and under the zoning – fit it into the zoning – both plans A & B. If a combination plan is presented the PC will be happy to review it. Mr. Heinzelmann was in agreement with the other members and had nothing to add.

9:00 p.m. – BREAK – 5 MINUTES.

Old Business –
Gillespie Sketch Plan:

Mr. Rossiter noted that this was informational only and there was no representative at the meeting. Mrs. Iacovelli made a motion that the PC submit a letter to the Zoning Hearing Board for their meeting of October 26 on the Gillespie Sketch Plan, stating that the PC supports a three-

* * *

EXHIBIT 26

THORNBURY TOWNSHIP, CHESTER COUNTY
BOARD OF SUPERVISORS
AGENDA

NOVEMBER 3, 1998

1. Call Meeting to Order – 7:30 P.M.
2. Minutes Approval of Meeting held October 20, 1998
3. Ordinance 1998-4 – Amending Chapter 155, Zoning by Changing Currently Zoned "A" Agricultural & Residential to the "B" Business District 19+/- Acres (Faucett Tract)
4. Birmingham Devco (Faucett Tract) Decision
5. Greens at Penn Oaks – David Linahan
   (A) Sewage Treatment Plant – Operations & Maintenance
   (B) Final Escrow Release for Sewer Plant
6. Thornbury Noble – Mary Ann Rossi
7. Resolution 1998-16 PennDOT Winter Traffic 5 Year Service Contract
8. Firemen's Relief Distribution
9. Treasurer's Report & Bill List Approval
10. Brandywine at Thornbury – Six Escrow Releases for: Phases 1, 3B and 7
11. Springhouse at Brandywine – Escrow Release #6
12. Public Comment
13. Adjournment

UPCOMING MEETINGS:

November 4, 1998 at 7:30 P.M. –	Park & Recreation Commission
November 9, 1998 at 7:30 P.M. –	Historic Preservation Commission
November 10, 1998 at 7:30 P.M.	Task Force
November 12,1998 at 7:30 P.M. –	Planning Commission
November 17,1998 at 7:30 P.M. –	Board of Supervisor

In attendance were Supervisors: Charles A. W. Wilson (Chairman), J. Christopher Lang (Vice Chairman), Patricia M. Dewey, Robert A. MacDonnell and William A. Schmidt; Robert Adams (Solicitor), David Linahan (Yerkes Associates – YA), Ronald Miller and Robert Eichman (PC).

Mr. Wilson announced that the Board was going into Executive Session with the Solicitor. Mr. Wilson called the meeting to order at 7:58 P.M. and led the Pledge of Allegiance.

Minutes Approval – A motion was made, seconded (PD/WS) and carried to approve the minutes of meeting held October 20, 1998. Mr. Lang abstained due to his absence from the meeting.

Ordinance 1998-4 – Amending Chapter 155 Zoning
Mr. Wilson stated that the Ordinance has been advertised and presented a copy of the proof of publication. This Ordinance amends Chapter 155 Zoning by changing the currently zoned 19.9 acres located at the north/east corner of Route 202 and Dilworthtown Road from "A" Agricultural and Residential to "B" Business District. Mr. Lang recommended adding specific conditions and wording prior to adopting the Ordinance. A motion was made, seconded (RM/PD) and carried to adopt Ordinance 1998-4. Mr. Lang abstained.

Birmingham Devco (Faucett Tract) Decision
Randall Schauer, Esq., Kevin Lahn and Robert J. Waters (Applicant) were present on behalf of the Faucett tract.

Mr. Wilson stated that the Board has a Decision before them based upon the applicant's filing for a conditional use to develop a neighborhood shopping center at the n/e corner of Route 202 and Dilworthtown Road. Mr. Lang questioned Item 11, *"Right-of-Way"* that stipulates a 30' right-of-way. Mr. Lang recommended a 50' right-of-way. Mr. Adams noted that the proposed road is not intended to be a full service public road. The road will allow a connection between the adjoining property to the north (Stoltzfus propery [sic]) and Dilworthtown Road. Mr. Schauer commented that the PC recommended a 30' right-of-way. Mr. Lang motioned to change the 30' right-of-way to 50'. Motion failed for lack of a second. Mr. Adams stated that Fronefield Crawford (Attorney for the Iacobucci Organization) faxed a letter dated 11/03/98 requesting that the right-of-way not traverse the area of the property east of the shopping center. Mr. Adams informed Mr. Crawford that the Board has deferred the right-of-way decision until viewing an engineered preliminary plan.

Raymond Iacobucci and Francis Iacobucci were present on behalf of the Greens at Penn Oaks Golf Course. R. Iacobucci stated he is not opposed to the road, but does not want it located in the buffer area because it would have a detrimental effect on the golf course. Mr. Iacobucci asked that the Board consider Mr. Crawford's request to keep the right-of-way west of the buildings. Mr. Wilson responded that the Board prefers to keep options open until there is a land development plan. Mr. Lang stated that the Decision did not incorporate his request to document the historic structures in Birmingham Township. Mr. Lang asked that

the structures be documented through archival architectural photographs and plans recording the basic dimensions of the structures. Mr. Schauer agreed and stated that copies of the historic structures documentation will be filed with both Birmingham Township and Thornbury Township (TT). Mr. Adams told the Board that he will add Condition 24 under "*Open Space*" for Historic Preservation. Mr. Adams recommended execution of the Decision at the Supervisors meeting on November 17th after Condition 24 is incorporated.

Brandywine at Thornbury (BT) Sewage Treatment Plant

Mr. Wilson asked Mr. Linahan to comment on a letter from Elizabeth Hurtubise, K. Hovnanian's attorney. Mrs. Hurtubise stated that Bozzuto has moved 18 residents into the apartment complex. Mrs. Hurtubise claimed BT was never notified that there would be additional sewage flow and as a result the tanks overflowed, in addition BT never had an opportunity to inspect sewer lines to make sure they were free of debris. Mrs. Hurtubise stated that BT and Bozzuto are having difficulty in agreeing on a sewer rate. Mrs. Hurtubise requested that TT issue no more Use & Occupancy Permits to Bozzuto until their issues are resolved. Mr. Linahan stated that BT's sewage treatment plant was switched on this morning. All the approvals were received to start up the plant. There is no reason to limit occupancy permits to Bozzuto with the plant on line. Pump and haul is a different situation because BT was exceeding what they were permitted to pump. Pump and haul was discontinued today. Mr. Linahan recommended that TT wait a year before taking dedication of the plant to better determine the cost of operating and maintaining the plant. Mr. Adams told the Board that he will write Mrs.

Hurtubise stating that (1) the overflow problem is a moot issue now that the treatment plant is on-line, (2) the sewer lines are obviously free of debris due to start-up of the plant and (3) the Township will not withhold Bozzuto's permits. TT has no basis to stop issuing permits to Bozzuto, the dispute is between Hovnanian and Bozzuto.

Greens at Penn Oaks (GPO) Treatment Plant

Mr. Linahan informed the Board that YA has made arrangements to get plant up and running. YA is recommending an escrow release of all but $100,000 to cover the first year's operation. The developer asked YA to operate the plant for six months and develop a routine. YA has agreed to oversee plant's operation and will bill GPO directly. After six months it is the developer's intention to turn the plant over to the Homeowners Association. Mr. Linahan noted that if the Township wants to take over the facility the HOA could manage it under township supervision. A motion was made, seconded (RM/WS) and unanimously carried to release $128,558. The total released to date is $698,148 and represents 87% of the project security with $100,000 remaining.

Thornbury Noble (TN)

Mary Ann Rossi (Attorney) and Adam Browler (Engineer) were present representing the applicant Allan Baumholtz.

Mrs. Rossi told the Board that after the PC meeting the applicant thought it feasible to amend the already approved final plan to actually build the supermarket, but the applicant believes a better plan and layout could be achieved by rezoning the 2 residential acres. Before TN starts engineering, TN is asking the Board to reconsider its position on rezoning. If the Supervisors agree, TN requests that the Board authorize a Hearing by advertising for the

rezoning. Mrs. Rossi presented two plans to the Board, one plan showing the market on the existing commercial site and a second plan with the 2 acre rezoning. Mr. MacDonnell recommended that the applicant go back to the PC and go through the regular land development process. Mrs. Rossi informed the Board that the posted rendering has been revised from the plan presented to the PC. The PC stated they want a credible alternative. Mr. Adams commented that the PC looked at both alternatives and requested the applicant to come up with a plan that can be developed as a shopping center. Mrs. Rossi asked if there was any support for rezoning the two acres. The site is going to have a supermarket, the applicant thought the Board might consider rezoning for better access and circulation. There was no support from the Board for rezoning at the July 7th meeting. If the PC recommends rezoning the site, will the Board consider it. Mr. Lang stated that unless the applicant can convince the Township there is a compelling benefit to rezone, the applicant would be unsuccessful. The Commons went from 4 commercial acres to 11 acres. The applicant is now requesting that the adjacent 2 acre residential property that was purchased for a buffer be rezoned to commercial. Mrs. Rossi asked if she is wasting her client's time. Mr. MacDonnell responded that the Board is not in favor of rezoning the property.

Resolution 1998-16 PennDOT Winter Traffic 5 Year Service Contract

A motion was made, seconded (WS/RM) and unanimously carried for TT to execute the Resolution 1998-16 and Contract with PennDOT for Westtown-Thornton Road in the amount of $1212.10.

Volunteer Firemen's Relief Distribution
Mr. Wilson noted that the Fire Marshal suggested a minor percentage change. The Board agreed to make the same percentage distribution as in 1997 and re-evaluate the distribution in 1999. A motion was made, seconded (WS/PD) and unanimously carried to distribute $12,566.21 as follows:

West Chester Firemen's Relief Association	(50%)	$6,283.36
Good Fellowship Relief Association	(20%)	$2,513.34
Concordville Fire Company Relief Association	(20%)	$2,513.34
Goshen Volunteer Relief Association	(10%)	$1,256.67

Treasurer's Report, Financial Statement & Bill List
A motion was made, seconded (CW/PD) and unanimously carried to approve the reports.

Township Park Improvements
There was a discussion regarding the timetable for completing the park improvements. Effective October 23, 1998 Lechmanik, Inc. must pay a $100 per day late penalty fee. Mr. MacDonnell stated if Lechmanik is granted an extension the penalty should be increased to $500/day. A motion was made, seconded (RM/WS) and unanimously carried that extension of the completion date be negotiated by Thomas Comitta and Mahlon Rossiter and that the penalty be increased to $500/day if the timetable is not met.

Brandywine at Thornbury – Escrow Releases
YA recommended approval and release of six escrow releases for BT as follows:

Route 202 & 926 Improvements, Release #1 contingent upon written approval from PennDOT
Phase 1 Escrow Release #1 in the amount of $3,743,357.30
Phase 3B Escrow Release #1 in the amount of $ 198,625.78

Phase 7	Escrow Release #1 in the amount of $	238,718.40
Phase 7	Escrow Release #1 in the amount of $	79,125.00

A motion was made, seconded (RM/WS) and carried to approve the escrow releases for BT. Mr. Lang abstained.

Springhouse at Brandywine – Escrow Release

YA recommended approval and release of Escrow Release #6 in the amount of $274,956.25. The total released to date is $892,854.35. This represents 74% of the project security with $313,045.65 remaining. A motion was made, seconded (RM/PD) and unanimously carried to approve the release.

Public Comment

Ronald Giacinto told the Board at the July 7, 1998 meeting they agreed to look at Mr. Baumholtz's plan with an open mind. Mr. Adams responded that the plan was not viable. Mr. Giacinto asked if the applicant engineers a 40,000+ s.f. supermarket that meets ordinance regulations is Mr. Baumholtz entitled for approval. If the applicant builds a supermarket without the rezoning, it will have a worse impact on the neighbors. It was noted that the rezoning would provide 25' more buffer area between Mr. Giacinto's property and the commercial site. Mr. Giacinto told the Board that the applicant is trying to show good faith and has paved Mr. Eichman's driveway. This was supposed to be done by Mr. Acciavatti 10 years ago. Mr. Giacinto further stated that the 2 acre buffer was never deed restricted by Mr. Acciavatti. Mr. Giacinto asked if Mr. Baumholtz prepares a fully engineered plan for presentation to the PC, and if the PC recommends the plan would the Board look at it open minded. Mr. Giacinto inquired why was the Board so amiable to rezoning the Faucett tract from residential to business. Mr. MacDonnell responded that the Faucett tract was surrounded by commercial. Mr.

MacDonnell suggested doing something reasonable with the property. Mrs. Dewey responded that a 48,000 s.f. supermarket does not have to be built, an alternative such as a Fresh Fields Market could be supported. Michael Aiello and Richard Crosley of Thornbury Estates expressed concern about buffering between the commercial area and their properties. Messrs. Aiello and Crosley were assured that the ordinance provides for buffering and screening.

Adjournment

A motion was made, seconded (PD/WS) and unanimously carried to adjourn at 10:00 p.m.

Respectfully submitted

/s/ Constance Dulin
Constance Dulin
Township Secretary

EXHIBIT 27

[LOGO] FOX, ROTHSCHILD, O'BRIEN & FRANKEL, LLP

ATTORNEYS AT LAW FOUNDED 1907

[Name And Address Omitted In Printing]

January 11, 1999

Robert F. Adams, Esquire
Gawthrop, Greenwood & Halsted, P.C.
119 North High Street
P.O. Box 562
West Chester, PA 19381-0562

RE: Thornbury Commons

Dear Bob:

I am writing to state my client's position with regard to the status of approvals on the referenced property. Specifically, on October 6, 1998, I submitted an application for an amended final plan or, in the alternative, for a rezoning. The Board of Supervisors made it very clear to me and my client that a rezoning will not be approved. Accordingly, we wish to proceed with an amended final plan. We will shortly submit a revision to the amended plan submitted on October 6, 1998. That plan shows an approximately 49,000 square foot grocery store on the property. We are scheduled to review the plan in sketch with the Planning Commission on January 13, 1999.

You and I had discussed briefly whether this is a new application or a revision to an approved site plan. It is my position that this is a revision to an approved site plan. The grocery store will be constructed pursuant to the provisions of the B-Business District. While the recently enacted amendments to the Zoning Ordinance alter certain requirements for a "shopping center", and while

this property may meet the definition of a "shopping center", we are proposing to comply with the requirements generally applicable to the B-Business District.

The instant plan does not alter the already installed public and quasi-public improvements. It is simply an amendment to alter the configuration of the building as shown on the approved plan. The use proposed is permitted in the B-Business District.

Based on the foregoing, I request that the Township move forward on the application for an amended final plan that was submitted in October of 1998 as the same will be amended by submission of a revised plan. Please advise if the Township will require a different procedure.

Thank you for your attention to this request.

Sincerely,

/s/ Mary Ann
Mary Ann Rossi

mar

cc: Allan P. Baumholtz, SRPA
Paul Bonvicino, AIA

EXHIBIT 28

LAW OFFICES
GAWTHROP, GREENWOOD & HALSTED
A PROFESSIONAL CORPORATION
119 NORTH HIGH STREET
POST OFFICE BOX 562
WEST CHESTER, PENNSYLVANIA 19381-0562

[Names And Phone Numbers Omitted In Printing]

February 3, 1999

Mary Ann Rossi, Esquire
760 Constitution Drive
Exton, PA 19341-0673

Re: **Thornbury Commons**

Dear Mary Ann:

I am writing in response to your letter of January 11, 1999 in which you stated your client's position regarding the status of approvals on the Thornbury Commons property. In short, the Township's position is as follows: Since your client does not propose to construct the shopping center in accordance with the approved final plan, Section 508(4)(iv) of the Municipalities Planning Code does not, in my opinion, insulate the approved plan from the application of subsequently enacted zoning amendments. Very clearly, that section protects the developer's right against modification or revocation of any aspect of the *approved final plat* pertaining to zoning classification or density, lot, building, street or utility location. The plan which is proposed to be submitted changes density and building location at the very least, and it is my opinion that your client is not protected by Section 508(4)(iv) to the extent that he proposes to submit a plan containing the degree of modification which now appears.

The rationale for the Township's position is that this is a new land development plan for a shopping center over 30,000 square feet. The application is subject to the provisions of §155-35.B.(1) of the Zoning Ordinance, in that it requires a conditional use in accordance with the procedures and standards set forth in §155-82.1. The introduction of a 50,000-square foot food store has the potential of creating substantial impact upon the community which is best evaluated through the conditional use process. Only when a conditional use approval for the shopping center in the form presently proposed has been approved will the Township entertain consideration of a land development plan therefor. I will be happy to discuss this matter further with you, should you have any questions or comments.

Very truly yours,

/s/ Robert F. Adams
Robert F. Adams

RFA/cb

pc: Mahlon Rossiter
W/Enclosure

EXHIBIT 29

THORNBURY TOWNSHIP, CHESTER COUNTY
PLANNING COMMISSION MEETING
JANUARY 13, 1999
AGENDA

1. Call to Order
2. Pledge to the Flag
3. Planning Commission Reorganization
4. Minutes Approval – December 9, 1999
5. Old Business
   A. Gleichert Final Plan – Submitted January 13, 1999
      Preliminary Plan approved with Conditions 12/15/98 by BOS
   B. Gillespie Final Plan – Expires March 9, 1999
      (1) Chester County Planning Commission Review Letter dated 12/23/98
      (2) Chester County Conservation District Review Letter dated 12/21/98
   C. Thornbury Noble – Proposal for Construction of a SuperFresh – M. Rossi
6. New Business
   A. Brandywine at Thornbury Phase 9 – Child Care Learning Center Plan Submitted January 13, 1999
7. Other Business
   A. Ordinance Review
8. Announcements

   Joint Board of Supervisors and Planning Commission Meeting – Thursday, January 28, 1999 at 7:30 P.M.

9. Public Discussion

10. Adjournment

Next Scheduled Planning Commission Meeting – February 10, 1999

In attendance were Planning Commission (PC) members: Ronald Miller (President), Barbara Iacovelli (Secretary), Robert Eichman, Ray Heinzelmann, Frank Speidel, John Stevenson, Michael Sweeney, and Mahlon Rossiter, Township Manager, Andy Rau, Solicitor, Mike Conrad, Yerkes.

Mr. Miller called the meeting to order at 7:35 p.m. and led the Pledge of Allegiance.

PC REORGANIZATION – Chairman: Mr. Miller was nominated by Mr. Eichman, seconded by Dr. Speidel, unanimously accepted by PC. Vice Chairman: Mrs. Iacovelli was nominated by Mr. Eichman, seconded by Mr. Sweeney, unanimously accepted by PC. Secretary: Mr. Eichman was nominated by Mr. Stevenson, seconded by Mr. Heinzelmann, unanimously accepted by PC. Recording Secretary: Mrs. Coletta was nominated by Mr. Stevenson, seconded by Mr. Eichman, unanimously accepted by PC.

Minutes Approval – November 12th minutes will be amended and resubmitted in February. December 9th minutes will have Mr. Miller's 12/14 letter concerning Gleichert attached to minutes, unanimously approved with Mr. Stevenson abstaining since he was absent.

Old Business –

Gleichert Preliminary Plan: Feone Crawford: 1) moved lot line between lots 2 & 3 – dog leg drastically shortened. 2) Added note on tree removal – will "snake" the driveway

to avoid. Discussion followed about a large oak tree in the driveway area. 3) Mike Conrad questioned ultimate row on 926 – existing well on lot 3 – prove CCHD approval when actual wells are dug. 4) Mr. Eichman asked about 926/driveway – changed to easement on lot 1 to 50', cartway to 14' extending back to the first branch of the driveway. Easement shall be noted on deed for lot 1 to benefit lots 2 & 3. Mr. Eichman and Mr. Stevenson reiterated that 14' is not enough; 25' would be better. Mr. Conrad stated the flare of the 14' will go to approximately 18' wide at edge of 926.

Gleichert Vote – Conditions:

1. Yerkes letters dated 9/2/98 and 1/12/99
2. PennDot letter dated 10/20/98
3. PC letter of Conditions dated 12/14/98
4. The driveway shall have a minimum entering radius of 10' and be paved to a 24' width for a distance of 50' back from the southern cartway edge of 926 and be approved by PennDot and Township engineer.
5. To save trees – 12' caliper or larger and the Township Engineer shall provide on-site approval of the final driveway layout.

Mrs. Iacovelli moved to approve the Gleichert subdivision with the above conditions, Mr. Stevenson seconded, unanimously approved by PC.

Gillespie Subdivision Final Plan: Stephen B. Woodward, Engineer – notes a zoning problem (Sect. 115-47D) requiring no more than 10% slope in row. The drive up to the 2nd house has 12% slope. Mr. Conrad (Sect. 115-63A) – remaining drive shall not be more than 10% – Mr. Rau stated that 115-63 is clear. Mr. Stevenson questioned deed notations concerning the common driveway. Language

should be written requiring joint maintenance but not joint culpability for destruction by abuse and/or accidents. Mr. Eichman suggested lowering the house to bring the drive to 10% which then Mr. Woodward expressed concern about the backyard slope. Mr.Stevenson doesn't mind the 12% as much as the 9' width and suggested making it 12' width. Mr. Sweeney agreed with Mr. Stevenson. Dr. Speidel agreed also but wondered if the PC can require widening . Mr. Woodward suggested 4' of flat shoulder added to downhill side. Mr. Eichman likes the shoulder but still wants the drive wider. Mr. Heinzelmann agreed. Mr. Miller wants it wider and asked for a pull-off. Mr. Rau agreed that pull-off can be a condition. The PC complimented Mr. Woodward on the improvements already made and asked him to review the driveway. They will be back in February.

Recess – 9:50-9:55

Brandywine at Thornbury – Phase 4: Mary Ann Rossi presentation. Mrs. Rossi related that the BOS will not approve rezoning any property along Rt. 926. Therefore, the new plan presented tonight will be submitted as a Final Plan – clock starting at submittal as a Revised Final Plan (from the originally approved plan). Andy Rau reserved judgment until hearing revisions. Discussion continued but Mr. Stevenson stated perhaps this could be deferred to the March meeting but the applicant prefers February and Mrs. Rossi feels this is a legal opinion. Approved plan has 38,000 sq. ft. plus 10,000 sq. ft. building coverage and the revised plan has 49,000 sq. ft. plus 10,000 sq. ft. building coverage. Changes: *Original* – one 38,700 sq. ft. building plus 10,000 sq. ft. building with no specified use, assumed to be multi-user. *New* – Rearranging the buildings, adding approximately 1100 sq. ft. and

specifically identifying the uses. The only buildings will be the two existing and the new A&P – 3 buildings total.

Mr. Paul Bonvicino of A&P described the proposal: A full service grocery store with drugs and flowers – 49,973 sq.ft. They have not changed access, there are 351 parking spaces; the shape of the building has been changed to rectangle instead of L-shaped; 125-150 employees; landscaped the 50' buffer to residential area; loading docks are sealed so there is closed loading and it is more quiet; there are no outdoor dumpsters; all loading is to the rear, east side of the building; building will be 35' high; all 4 sides of the building will be faced.

Mr. Stevenson questioned access – 90% of the traffic will come from Rt. 926 with a 24' entrance. Mr. Baumholtz (landowner) replied that 24' is more than enough. Discussion followed on traffic trips and flows from Rt. 926. Mr. Baumholtz said a traffic study will be submitted with the plan. They proposed 2-4 tractor trailers per day. The docks can handle 3 trucks per day, also, 12-15 step vans; the bays all face Rt. 926. Mr. Sweeney, Mr. Heinzelmann and Dr. Speidel had no comment. Mr. Stevenson asked if it would tie in to public sewer – Mrs. Rossi stated possibly with Westtown and West Goshen. Mr. Eichman added nothing further; Mrs. Iacovelli stated the PC will look at certain issues but speaking for herself, believes that this plan ban be reviewed as a Revised Final Plan with the caveat that the PC may need extensions of the time clock for review. Mr. Miller is concerned about traffic, parking, and the review time. The plan should be submitted well enough in advance to give the township consultants sufficient review time. Mrs. Rossi will submit a letter listing the changes. Mr. Miller also asked for line of sight views from Rt. 926 and Rt. 202. The PC endorses public

water & sewer. Mrs. Iacovelli asked for impervious surface percentages. Mr. Stevenson discussed the stormwater basin and reminded Mrs. Rossi and Mr. Baumholtz that those issues will be addressed and reviewed also. He thanked Mr. Baumholtz for filing in the old construction sites. Mr. Stevenson also asked for a report on the eskrow account. Mr. Eichman noted detention basin maintenance in the future. Mr. Rossiter asked about signage – are special requests needed? Mike Conrad talked about Rt. 202 entrance and island placement – Mr. Baumholtz does *not* want trucks entering from 202 – and truck queuing and loading bays. Mike also wants to know the plans for current sewage field area and green space coverage.

Ron Giacinto, neighbor stated he felt the plan was "fair" in his estimation. His problem is that the BOS should allow the next lot to be rezoned so the building could be moved back for better access. It seems this is similar to an old plan which Chester County did not like with a short access way. Ron wants the PC to ask for the expansion from the BOS. Mrs. Rossi stated that the Board was emphatically against expansion. Discussion followed about accepting this plan or is there another viable plan. Mr. Stevenson moved to table this discussion until we find out its status, Mrs. Iacovelli seconded, unanimously approved.

New Business –

Brandywine at Thornbury, Phase 9 – Commercial Area: Mark Mayhew, of Taylor, Wiseman & Taylor, outlined the plan for Children's World Learning Center. This will consist of one single story building 2 play areas and a 4' high chain line fence surrounding the site with internal access from Paddock Lane only.

Mike Conrad discussed his Letter of Review received at tonight's meeting, dated 1/13/99 and asked Andy Rau if this should be reviewed under PRD or BI-Business district restrictions. Andy feels it should be under PRD, but BI for some specifics for area and bulk specs, etc. Mr. Miller and Mr. Stevenson agreed. Mr. Miller asked the PC for its opinion – all said they didn't have a problem with a combined, open, review of the Plan. It might work a lot better than locking into only one 20 section. Mr. Heinzelmann was not against this use but remembered that the original plan for the commercial center was to have retail so people didn't have to cross Rt. 202 to shop. Mr. Stevenson agreed and hopes eventually, there will be a pedestrian walkway across Rt. 202. Mrs. Iacovelli had no problem combining the zoning and asked if this was all the commercial. Mrs. Rossi answered, "Yes." Mr. Miller clarified that this was a Final Plan – and the clock starts tonight. Mr. Stevenson questioned the single entrance and suggested doubling it. Mrs. Iacovelli agreed, stating it needs a drop-off loop. Mr. Finnimore, school representative from Aramark, states that they require no drop-off since parents park and get out of their cars with their children.

Mrs. Iacovelli feels this is unsafe and strongly suggested a drop-off lane instead. There are 180 children, ranging in age from infants through "before and after school programs" – usually up to 9-10 year-olds, and 20 staff members. Mr. Heinzelmann asked re, school buses; John Finnemore stated that a van bus will pick them up at the schools and drop them off. Mr. Miller stated the facility should be screened along Martingale Road and the apartments; Mark stated that it will be fully planted with evergreens. Mr. Stevenson suggested hooded, downcast lights; Mark stated that four 12' street lights, wall packs

and flood lights will be down lighted. Mr. Fennimore stated usual hours are five days a week – 6:00 am.-7:30 p.m. The building will be all brick, pitched roof. The Design Review Committee will review the building layout. Mr. Fennimore stated their goal is to be under construction April 1st. Mark listed changes from strict B-1 District requirements, using 9x18 parking stalls instead of 9-1/2x18; parking in front; 35 stalls – 1/319; proposing less than 2' candles on lights; no 50' buffer to the north abutting the apartments. Mr. Miller reviewed possible conditions for approval as follows:

1) Parking lot – ample parking, drop-off flow, one way access.

2) Emergency access.

3) Additional screening along Martingale and east side of property.

4) Lighting – placement, shading not cast beyond property.

5) Yerkes letter dated 1/13/99.

6) Chester Co. Health

7) Fire Marshall

8) Tom Committa review on landscape.

9) Fence height

10) HOA agreement to be reviewed by Andy Rau.

This parcel is part of the Homeowner Association – property owner is responsible for maintenance of building and landscaping. The center will be open to the public.

Other Business –

Ordinance Review: PC discussed Mr. Miller's draft of 20 changes. Mrs. Iacovelli moved to approve, Mr. Sweeney seconded, unanimously approved to go to the BOS.

PRD Apartment Lights: Mr. Eichman and Mr. Stevenson mentioned the height and glare of apartment section lights and feel they are not correct, approved lights. Mrs. Iacovelli moved, Mr. Stevenson seconded, with unanimous approval for Mr. Miller to ask Andy Rau and Mike Conrad to check the lights and if they are not the proper, approved ones, report this to the BOS.

Meeting adjourned: Mr. Heinzelmann moved, Mr. Stevenson seconded, all approved, meeting adjourned at 11:30 p.m.

Respectfully Submitted,

Barbara Iacovelli, Secretary

[Attendance Sheet signed by one person Omitted in printing.]

EXHIBIT 30

THORNBURY TOWNSHIP, CHESTER COUNTY
BOARD OF SUPERVISORS
JANUARY 19, 1999

In attendance were Supervisors: Patricia M. Dewey (Chairperson), J. Christopher Lang (Vice Chairperson), Robert A. MacDonnell and Charles A. W. Wilson; Mahlon Rossiter (Twp. Manager); and Ronald Miller (Planning Commission – PC).

Minutes Approval

A motion was made, seconded (CW/RM) and carried to approve the minutes of the reorganization meeting and regular meeting held January 4, 1999.

Brandywine at Thornbury (BT) – Sewage Treatment Plant Purchase Proposal

Mrs. Dewey referred to a letter dated January 4, 1999 from Elizabeth Hurtubise, attorney, for K. Hovnanian. Mrs. Hurtubise informed Thornbury Township (TT) that Hovnanian has received a written offer from Aqua Source to purchase the sewage treatment plant at BT. According to the Final Sewage Facilities Agreement TT has 60 days to accept dedication of the plant. Mrs. Dewey stated that the Township is waiting for letters from the Solicitor and Township Engineer regarding Hovnanian's proposal. The Board recommended that this item be tabled until the February 2, 1999 meeting.

Gleichert Final Plan

Fronefield Crawford, Esq. was present on behalf of the Robert Gleichert Subdivision. Mr. Crawford stated there was an issue at the January 4, 1999 meeting regarding the tail from lot 2 into lot 3 that has been addressed in the final plan. Lots 2 and 3 include the dogleg within the gross area. Another issue is widening the driveway entrance. The applicant has applied to PennDOT for a road occupancy permit. The state requested a 10' radius for flares to provide adequate site distance. The PC recommended that the driveway be 24' wide. The applicant believes 14' is appropriate for safety and does not wish to create additional impervious surface that will cause more storm water run-off and aesthetic problems. The third issue concerned using the existing well on Lot 3 as a test well. Mr. Crawford stated that 5 gallons a minute in a 24 hour draw down test is deemed appropriate for a 3-lot subdivision by the County Health Department. If the applicant cannot meet the 5 gallons per minute requirement a new well will be drilled. Mrs. Dewey read a memorandum dated January 19, 1999 from Ronald Miller itemizing the PC's five conditions of approval. The PC voted to recommend that the Board approve the Gleichert plan subject to the following:

1. That the concerns raised in the Yerkes letters dated September 21, 1998 and January 12, 1999 be satisfied with the approval of the Township Engineer.

2. That the recommendations in the PennDOT letter dated October 20, 1998 be satisfied.

3. That the Planning Commission letter dated December 14, 1998 be satisfied.

4. That the driveway shall have a minimum entering radius of 10' and shall be paved to a 24' width for a distance of 50' back from the southern cartway edge of Route 926 and to be approved by PennDOT and the Township Engineer.

5. In order to save trees 12" caliper or larger, the Township Engineer shall provide an on-site approval of the final driveway layout.

Mrs. Dewey questioned Condition #4 and referred to a memo and drawing from YA dated 1/19/99 recommending that the driveway be 24' at the right-of-way and tapered to a width of 14' at Lot 1's driveway. The Board agreed that a 24' wide driveway was excessive and recommended the 10' entering radius and 14' wide driveway. Mr. Lang asked if the large oak tree is in the flag stem. Mr. Crawford confirmed that it was. Mr. Lang stated that steps must be taken to mitigate damage to the roots of this very large specimen oak tree. Mr. Miller told the Board that YA's letter states any tree larger than 12" must be marked on the plan. Mr. Crawford agreed that a TT representative should visit the site to identify large trees that would be impacted during construction of the driveway. The Board agreed with Mr. Crawford that there is no purpose in marking trees in the non-driveway area.

A motion was made, seconded (CL/RM) and unanimously carried to approve the Gleichert 3 lot subdivision final plan subject to the five conditions of the PC, including Condition 4 as amended and the addition of Condition 6 as follows: That steps must be taken to mitigate damage to the roots of the very large specimen oak tree.

Hill Property

Mrs. Dewey announced that the township purchased the Hill property on January 15, 1999. Mrs. Dewey proposed that the P&R suggest some names for the park and that a sign be erected on the property when a name is decided. One suggestion is Waln Run Park.

Thornbury Noble (TN)

Mrs. Dewey reported that the Township received a call, today, from TN's attorney informing TT that the applicant is coming in with a plan for the next PC meeting. Mrs. Dewey stated that the Supervisors must decide if this is a new application or an amended plan. Mr. MacDonnell responded that the Board took the position that the plan delivered to the Township in October 1998 on behalf of TN be considered a new application and not an amendment to an approved final plan. A motion was made, seconded (RM/CW) and unanimously carried that any plan submitted by Thornbury Noble to the Township shall be presented as a new application and will not be considered as an amendment to an approved final plan. The Board requested the Township Manager to notify counsel to TN regarding the Board's motion. Mr. Lang recommended that the Board have the Solicitor advise and support the Board's position on this issue.

Streambank Restoration Project

Mrs. Dewey noted that the Streambank Restoration Project at the Goose Creek Park begins March 15, 1999 and work days will be March 18th and March 19th.

Bill List

A motion was made, seconded (CL/RM) and unanimously carried to approve the bill list.

Other Business

Mr. MacDonnell commented that Donald Moore, owner of Calista and the Goose Creek Grill in TT, is going to be the recipient of the Paradigm Award presented by the South Eastern Economic Development Company of Pennsylvania (SEED Co). Mr. MacDonnell thought the Township should have representation at the luncheon on January 28, 1999. Mrs. Dewey and Mr. Wilson indicated that they would attend the presentation.

PC Reorganization Meeting – Mr. Miller informed the Board that the PC reorganized on January 13, 1999 and that he was reappointed Chairperson, Barbara Iacovelli was appointed Vice-Chairperson and Robert Eichman was appointed Secretary. The PC will continue to work on updating the ordinances and hold work sessions to realize this goal. Mr. Miller will meet with Andrew Rau, Esq. to put together conditions for Brandywine at Thornbury, Phase 9, Children's Learning Center final plan submitted January 13, 1999.

Adjournment

A motion was made, seconded (CL/RM) and unanimously carried to adjourn at 8:20 P.M.

Respectfully submitted,

Constance Dulin
Township Secretary

EXHIBIT 32

SUPER FRESH FOOD MARKETS, INC.
707 Railroad Avenue,
P.O. Box 68
Florence, New Jersey 08518

March 15, 1999

Thornbury Noble Limited Partnership
c/o Acciavatti Development, Inc.
1845 Middletown Road
Glen Mills, PA 19342

and

John Acciavatti
c/o Acciavatti Development, Inc.
1845 Middletown Road
Glen Mills, PA 19342

Re: Proposed Super Fresh
Route 202 and Route 926
Thornbury, PA

Thornbury Noble Limited Partnership ("Thornbury") is the owner of certain property located on the corner of Route 202 and Route 926, Thornbury, Pennsylvania (the "Shopping Center") upon which Thornbury intends to construct a supermarket building of approximately 52,000 square feet of floor area as shown on Conceptual Plan number P97858CA4 last revised March 1, 1999 (the "Premises"). Thornbury intends to lease the Premises to Super Fresh Food Markets, Inc. ("Super Fresh") and the parties have entered into a non-binding letter of intent regarding the terms of the proposed lease. The aforesaid letter of intent and the proposed lease are subject to Super Fresh's corporate approval.

Super Fresh and Thornbury have agreed that, notwithstanding that Super Fresh has not yet received corporate approval of the terms of the proposed lease of the Premises, Super Fresh shall immediately commence, or cause the commencement of, all land use engineering plans which may be required to obtain, and shall thereafter promptly apply for, all governmental approvals, including, without limitation, site plan approval, Planning Board approval and the approval of the Board of Supervisors of the Township of Thornbury, required for the construction of the Shopping Center and the use thereof for retail purposes, including use of the Premises as a supermarket and drugstore, excluding building permits, which shall not be Tenant's obligation (the "Land Use Approvals"). Super Fresh shall, after applying therefor, diligently seek to obtain each of the Land Use Approvals Thornbury hereby consents to the filing by Super Fresh of any and all applications required to obtain the Land Use Approvals and hereby agrees to diligently cooperate with Super Fresh in good faith to obtain the Land Use Approvals, including, without limitation, signing all applications which are required to be signed in the name of the owner of the Shopping Center in order to obtain the Land Use Approvals.

If a lease is not executed by Thornbury and Super Fresh within sixty (60) days of the date hereof for any reason, then Thornbury hereby agrees to reimburse Super Fresh, within thirty (30) days of Super Fresh's demand therefor, a sum equal to fifty (50%) percent of the reasonable costs incurred by Super Fresh to apply for and obtain the Land Use Approvals, including, without limitation, the cost of the preparation of all required engineering plans and the cost of all legal and other professional fees incurred by

Super Fresh in connection therewith. If the proposed lease of the Premises to Super Fresh does not proceed for any reason, but Landlord, or any party related to Landlord, hereafter develops the Shopping Center as a retail Shopping Center then Thornbury hereby agrees to reimburse Super Fresh for the remaining fifty (50%) percent of the aforesaid costs and expenses within thirty (30) days of Super Fresh's demand therefor. If Super Fresh does not receive corporate approval of the proposed lease at any time before or after the date hereof or if the proposed lease is not signed within sixty (60) days after the date hereof (unless Thornbury and Super Fresh are at that time still engaged in good faith negotiations in respect thereof) Super Fresh shall be entitled at any time thereafter to discontinue its applications for the Land Use Approvals, provided that the aforesaid agreement by Thornbury to reimburse Super Fresh shall continue to apply and upon Super Fresh's receipt of the aforesaid amounts Super Fresh shall assign and delivery [sic] to Thornbury the originals of all plans and applications in Super Fresh's possession in respect of the Land Use Approvals.

The parties hereto hereby acknowledge and agree that nothing herein shall be, or be deemed to be, an agreement by Super Fresh to the terms of the proposed lease which shall remain subject to the corporate approval of Super Fresh in its sole and absolute discretion.

John Acciavatti has signed this letter to confirm that he personally hereby unconditionally guarantees the obligations of Thornbury set forth herein. This guarantee is a guarantee of payment and not of collection and shall not he discharged by any negotiation or agreement between Thornbury and Super Fresh regarding the terms of the proposed lease or by any discharge of the obligations of

Thornbury hereunder other than a discharge by Thornbury's performance of the outstanding obligations.

Super Fresh Food Markets, Inc.

By: /s/ John Majczan

Agreed
Thornbury Noble Limited Partnership

_____

Agreed
John Acciavatti

_____

EXHIBIT 33

THORNBURY TOWNSHIP, CHESTER COUNTY
BOARD OF SUPERVISORS

MARCH 16, 1999

In attendance were Supervisors: Patricia M. Dewey (Chairperson), J. Christopher Lang (Vice-Chairperson), William A. Schmidt and Charles A. W. Wilson; Mahlon Rossiter (Township Manager), Andrew Rau (Solicitor), Ronald Miller and Robert Eichman (Planning Commission) and D. J. Tindall (Park & Recreation).

Minutes Approval

February 16, 1999 minutes – tabled due to a lack of quorum.
March 2, 1999 minutes – Mr. Lang requested that Page 2, *Circle of Trees,* be changed from White Cedars to Virginiana Cedars. A motion was made, seconded (WS/CW) and carried to approve the minutes incorporating Mr. Lang's change.

WEGO Police Report

Chief John Dumond reported that there were a total of 117 calls for the month of February. Twenty-four people are enrolled in the Citizens' Police Academy. Chief Dumond informed the Board that the bike patrol is working well. Mr. Rossiter stated that Thornbury Township's (TT) noise ordinance is being violated by a trash hauler that is picking up trash at 5:30 A.M. Chief Dumond responded that he would look into the complaint.

Thornbury Town Center

A motion was made, seconded (CW/CL) and carried authorizing the Township Manager to spend $5,000 for immediate building maintenance.

Commons at Thornbury a/k/a Thornbury Noble
Mrs. Dewey stated that TT has been advised that the applicant is requesting a Conditional Use Hearing. A motion was made, seconded (CW/WS) and carried authorizing the expenditure for consultant fees to study the impact of expanding the site. Mr. Rau noted it is the Township's position that there is a significant enough change proposed by the applicant to warrant this study.

Suburban Cable (SC) Franchise Renewal
Mr. Rau updated the Board on the status of the franchise renewal. Mr. Rau reported that most of the major sticking points with SC have been addressed. SC will agree to litigation if TT believes SC is failing in their performance which gives TT some enforcement powers that provide for financial penalties to the cable company. SC agreed in principle that if they provide Internet services in the future, TT will have the opportunity to demand extra fees. Mr. Rau showed SC's Trunk Line Map to the Board. Mr. Rau and the Board reviewed the map and clarified nine issues posed by SC. Mr. Rau told the Board he would review the inconsistencies in SC's letter dated 1/25/99 and return to SC with the Board's position. Mr. Rau told the Board he will prepare a finalized agreement with a summary for their review.

EXHIBIT 34

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
VOLUME II

– – –

THORNBURY NOBLE, LTD.	:	CIVIL ACTION
Plaintiff	:	
Vs.	:	
THORNBURY TOWNSHIP, Chester County, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, and The members of the Board of Supervisors in their official capacity: PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A.W. WILSON, and ROBERT A. MacDONNELL,	:	
Defendants	:	NO. 99-CV-6460

– – –

AUGUST 2, 2001

– – –

Oral deposition of JOHN ACCIAVATTI, in the above captioned matter, held at the offices of Siana, Bellwoar And McAndrew, 941 Pottstown Pike, Chester Springs, Pennsylvania, commencing at 10:00 a.m., on the above date, before Bonnie Block, Court Reporter and Notary Public.

* * *

[182] Q. Do you remember who?

A. Probably Joel Decker.

Q. Did it involve you?

A. Did it involve me?

Q. Yes. Or is this a conversation that you heard about from somebody else at Thornbury Noble?

A. I had personal conversations with Joel Decker. I don't remember how and when it was resolved or when the final word came.

Q. Who decided not to pursue a supermarket at the Thornbury Noble site? Was it Super Fresh or was it Thornbury Noble?

A. We decided to go with the strip center.

Q. Thornbury Noble did?

A. Yes.

Q. As regards to the plans that were submitted on or about October 6th, 1998, before the November 3rd meeting before the Board of Supervisors that were

* * *

EXHIBIT 35

THORNBURY NOBLE LTD.

April 7, 1999

Thornbury Township Chester County
P.O. Box 134
Westtown, PA 19395

RE: Permits – The Commons at Thornbury

Dear Sirs:

We are hereby submitting our Application for the Building Permit for our approved plan. Therefore, enclosed are the following documents.

1. Application form for building permit
2. Mandatory worker's compensation form
3. Certificate of Insurance
4. Copy of letter from PA. Department of Licenses and Inspections extending their approval
5. 3 copies of architectural plans signed and sealed with specifications.
6. 3 copies of site plans which include soil and erosion control.
7. Approval letter from Chester County on erosion and sediment control
8. Public water and PA Licensed sewer already operable – Not applicable

Not included in this submission is the application for Certificate of Occupancy – Not applicable.

If any additional information is required please call me or my attorney Mary Ann Rossi immediately.

Sincerely,

/s/ Allan Baumholtz
Allan Baumholtz

CC: Mary Ann Rossi, Esq. **HAND DELIVERED**

P.S. Office building plans already on file

---

(610) 399-1425 THORNBURY TOWNSHIP No. _____
CHESTER COUNTY Fee _____

APPLICATION FOR
BUILDING PERMIT

OFFICE USE: Type ___ Use ___ Zone ___ Tax Parcel # ___

Subdivision _____ Lot # _____ Address _____

Owner Thornbur Noble Limited Phone # 215-732-5250

Address P.O. Box 179 Westtown PA

Contractor Falcone and Sons Phone # 610 891 9111

Address 650 Painter Rd. Media

Architect/Other Murphy Architectural Phone # 610 696 4843

Address 1450 Brook Rd _____
West Chester PA

THE APPLICANT (CIRCLE 1: owner-contractor-architect)
HEREBY MAKES APPLICATION TO: [ ] alter [ ] erect

Description STRIP RETAIL STORES/OFFICES BILD.

On property located at _____

Lot # _____ Lot Area _____ Frontage _____ Depth _____

Set back from R.W. ___ Side Yard L ___ R ___ Rear Yard ___

Floor Area _____ Height _____ Width _____ Depth _____

Ground Coverage - bldg.__ S.F. Pavement__ S.F. Total__ S.F._

Sewage Disposal – Public Sewer [ ] On Site [ ]
CCHD Permit # _____ Date _____

Water Supply – Public Water [ ] On Site [ ]
CCHD Well Permit # _____ Date _____

Building Plans – Attached [ ]
Building Data on back of application [ ]

See Attached Drawings

I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the provisions of the Thornbury Township Building code and Zoning Ordinance.

PERMIT
APPROVAL

Signature of Property Owner
/s/ Allan Baumholtz Partner Date 5/6/99

Building, Inspector _____ Date _____

Zoning Officer _____ Date _____

In the event that an application for a permit should, in the opinion of the Township, require review by the Township Engineer or other professional personnel retained by the Township, the applicant shall bear such costs as are incurred by the Township in connection with such review. If additional field inspections are necessary to control soil erosion problems, the applicant will be responsible for the cost of such inspections.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THORNBURY NOBLE, LTD., Plaintiff v. THORNBURY TOWNSHIP, Chester County, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, and the Members of the Board Of Supervisors in their official capacity: PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A.W. WILSON and ROBERT A. MacDONNELL, Defendants	CIVIL ACTION NO. 99 CV-6460 JURY TRIAL DEMANDED

ORDER

AND NOW, this ___ day of ___, 2003, upon consideration of Defendants' Renewed Motion for Summary Judgment and the response of plaintiff Thornbury Noble, Ltd., thereto, it is hereby ORDERED and DECREED that Defendants' Renewed Motion for Summary Judgment is DENIED.

BY THE COURT:

_____
THOMAS N. O'NEILL, JR., J.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THORNBURY NOBLE, LTD., Plaintiff v. THORNBURY TOWNSHIP, Chester County, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, and the Members of the Board Of Supervisors in their official capacity: PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A.W. WILSON and ROBERT A. MacDONNELL, Defendants	CIVIL ACTION NO. 99 CV-6460 JURY TRIAL DEMANDED

RESPONSE OF PLAINTIFF, THORNBURY NOBLE, LTD., TO THE RENEWED MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS, THORNBURY TOWNSHIP AND THE THORNBURY TOWNSHIP BOARD OF SUPERVISORS

(Filed May 22, 2003)

Plaintiff, Thornbury Noble, Ltd. ("Thornbury Noble"), by and through its attorneys, MacElree Harvey, Ltd. and Fox Rothschild LLP, hereby responds to the Renewed Motion of Defendants, Thornbury Township and the Thornbury Township Board of Supervisors for Summary Judgment pursuant to Rule 56 of the Federal Rules of

Civil Procedure and requests that said renewed motion be denied based upon the attached brief in opposition to Defendants' Renewed Motion for Summary Judgment.

WHEREFORE, Plaintiff, Thornbury Noble, Ltd., respectfully requests that this Honorable Court deny Defendants' Renewed Motion for Summary Judgment.

Respectfully submitted,

/s/ Mary Ann Rossi

Mary Ann Rossi, Esquire
I.D. No. 30013
MacElree Harvey, Ltd.
17 West Miner Street
Box 660
West Chester, PA 19381-0660
(610) 436-0100

Craig A. Styer, Esquire
I.D. No. 60253
Fox Rothschild LLP
760 Constitution Drive
P.O. Box 673
Exton, PA 19341-0673
(610) 458-7500
Counsel for Thornbury Noble, Ltd.

Date: May 22, 2003

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THORNBURY NOBLE, LTD.,	:	CIVIL ACTION
Plaintiff	:	NO. 99 CV-6460
v.	:	
THORNBURY TOWNSHIP, Chester County, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, and the Members of the Board Of Supervisors in their official capacity: PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A.W. WILSON and ROBERT A. MacDONNELL,	:	
Defendants	:	JURY TRIAL DEMANDED

ORDER

AND NOW, this ___ day of ___, 2003, upon consideration of Defendants' Renewed Motion for Summary Judgment and the response of plaintiff Thornbury Noble, Ltd., thereto, it is hereby ORDERED and DECREED that Defendants' Renewed Motion for Summary Judgment is DENIED.

BY THE COURT:

_____
THOMAS N. O'NEILL, JR., J.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THORNBURY NOBLE, LTD.,	:	CIVIL ACTION
Plaintiff	:	NO. 99 CV-6460
v.	:	
THORNBURY TOWNSHIP, Chester County, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, and the Members of the Board Of Supervisors in their official capacity: PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A.W. WILSON and ROBERT A. MacDONNELL,	:	
Defendants	:	JURY TRIAL DEMANDED

RESPONSE OF PLAINTIFF, THORNBURY NOBLE, LTD., TO THE RENEWED MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS, PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A.W. WILSON and ROBERT A. MACDONNELL

(Filed Apr. 17, 2003)

Plaintiff, Thornbury Noble, Ltd. ("Thornbury Noble"), by and through its attorneys, MacElree Harvey, Ltd. and Fox Rothschild LLP, hereby responds to the Renewed Motion of Defendants, Patricia A. Dewey, J. Christopher Lang, William A. Schmidt, Jr., Charles A.W. Wilson, and Robert A. MacDonnell for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure and requests that said renewed motion be denied based upon

the attached brief in opposition to Defendants' Renewed Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

WHEREFORE, Plaintiff, Thornbury Noble, Ltd., respectfully requests that this Honorable Court deny Defendants' Renewed Motion for Summary Judgment.

Respectfully submitted,

/s/ Mary Ann Rossi
Mary Ann Rossi, Esquire,
I.D. No. 30013
MacElree Harvey, Ltd.
17 West Miner Street
Box 660
West Chester, PA 19381-0660
(610) 436-0100

Craig A. Styer, Esquire,
I.D. No. 60253
Fox Rothschild LLP
760 Constitution Drive
P.O. Box 673
Exton, PA 19341-0673
(610) 458-7500
Counsel for Thornbury Noble, Ltd.

Date: April 17, 2003

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA

THORNBURY NOBLE, LTD.,	: CIVIL ACTION
Plaintiff	:
v.	: NO. 99-CV-6460
THORNBURY TOWNSHIP, Chester County, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, and the members of the Board of Supervisors in their official capacity: PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A.W. WILSON, and ROBERT A. MacDONNELL,	:
Defendants	: JURY TRIAL DEMANDED

PLAINTIFF'S EXHIBITS TO BRIEF IN OPPOSITION TO THE MOTIONS OF DEFENDANTS FOR SUMMARY JUDGMENT PURSUANT TO RULE 56

EXHIBIT 2

Charles A.W. Wilson
855 Meadowcroft Circle
West Chester, PA 19382
610-399-1089
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November 20, 1997

Memo to:

Thornbury Township Supervisors
Chester County, Pennsylvania

Yesterday Mahlon and I met with John and Richard Acciavotti regarding Thornbury Commons. They have received letters of interest from Super Fresh and Genuardis, both with an interest in placing a 50,000 square foot supermarket on their property. For whatever reason they are selecting Genuardis, who would like to open a new market by Thanksgiving of next year.

Our discussion indicated the remaining open foundations would be filled and the market building would be placed on the eastern end of the property. This seems viable, except that it places the building in an overlapping position with the entrance to the property from route 926.

The Acciavottis already own, as we know, the residential property immediately east of Thornbury Commons. They have now entered into a purchase agreement for the next adjacent residential property along route 926. As a result if we allow them to locate the eastern edge of the market building on the eastern border of the first residential property, the route 926 entrance is opened significantly. This would require a zoning change at the first residential property and some manner to accommodate the building

location on the edge of the "commercial" property. The second residential property which they are under contract to purchase will become a part of the condominium agreement of Thornbury Commons, but would be a residential rental property.

Their proposal seems realistic and achievable. While the timetable will require some cooperation, the engineering changes seems [sic] accomplishable, with the understandable [sic] that storm water management basin must be re-evaluated and may need to be resized to accommodate the increased impervious area if we allow them to move the building onto what is now a residential parcel (ie, the adjacent residential parcel).

As they are and we have been anxious to have some progress on this property, could you all please respond in some manner as to whether you are willing to entertain a proposal for the market and rezoning of the adjacent residential parcel to allow for better building placement and easier ingress and egress from Thornbury Commons.

The Acciavottis will present a sketch plan at our December 2nd meeting.

Best regards,

Chuck Wilson

EXHIBIT 4

THORNBURY TOWNSHIP, CHESTER COUNTY BOARD OF SUPERVISORS

JANUARY 20, 1998

In attendance were Supervisors: Charles A. W. Wilson (Chairman), J. Christopher Lang (Vice Chairman), Patricia M. Dewey, Robert A. MacDonnell and William Schmidt; John Hall (Solicitor), Ronald Miller and Robert Eichman (Planning Commission), D.J. Tindall and Helene MacLaughlin (Park & Recreation Commission) and Mahlon Rossiter (Township Manager).

Mr. Wilson called the meeting to order at 7:30 P.M. and led the Pledge of Allegiance.

Mr. Wilson stated that the Commons at Thornbury is not on tonight's Agenda. The developer has not submitted a sketch plan for presentation. Mr. Wilson announced that the Supervisors are going to have work sessions prior to the public meetings. Nothing will be voted on and the sessions are open to the public. To avoid interruptions during the meetings the Board will only have public comments at the end of the meeting.

Police Report

Sergeant Barton reported there were 87 calls for the month of December. The township's yearly percentage of calls for 1997 was 6.6%. Sgt. Barton acknowledged a resident's complaint regarding U-Turns at Route 202 and Greentree Drive and stated that WEGO would look into the complaint.

Minutes

A motion was made and seconded (RM/CW) to approve the minutes of the Reorganization Meeting and Regular Meeting held January 5, 1998. Mrs. Dewey and Mr. Lang in favor. Mr. Schmidt was absent form the January 5, 1998 meeting.

Brandywine at Thornbury (BT)

Mary Ann Rossi (Attorney) was present on behalf of K. Hovnanian to request a modification of Condition 59 of the PRD plan. Mrs. Rossi stated that the condition obligates the applicant to provide 12,000 s.f. of commercial area. The applicant must construct at least 3,000 s.f. of commercial space prior to the issuance of the building permit for the 160th unit of the PRD. The Bozzuto Group is requesting 212 permits for the apartment complex. It was not anticipated that Bozzuto would pull all permits at the same time. The applicant has not been successful in attracting anyone to build a convenience food store. Discussion is underway with a potential user for the entire 12,000 s.f., but it is unlikely that a convenience store will be at this location. A motion was made, seconded (PD/WS) and unanimously carried to amend Condition 59 extending construction time of the commercial site in Phase 9 indefinitely, up and until the "build out" of the project. In the event that there is not a total build out of the commercial area when BT is completed, whatever remains of the 12,000 s.f., shall be reserved for open space. Mr. Lang asked Mrs. Rossi how is Phase 9 being marketed and requested a Listing Sheet. Mrs. Rossi replied that she would obtain this information from the applicant and forward it to Mr. Rossiter.

Exxon Final Land Development Plan

No one was present on behalf of the applicant. Mr. Wilson reported that the Exxon Station located at Routes 202 and 926 submitted a plan to convent [sic] the three bays into a Tiger Mart convenience store. Mr. Wilson read Mr. Miller's letter dated 1/16/98 stating the PC recommended approval of the plan with six conditions. Mr. Miller informed the Supervisors there was a concern regarding the traffic flow within the site, as well as traffic entering and exiting at Route 202 and 926. The PC suggested that the exit/entrance at Route 926 be moved further west, however, Exxon has PennDOT approved for the entrance location. A motion was made, seconded (PD/CW) and unanimously carried to approve Exxon's Land Development plan contingent upon the Conditions of Approval.

Neall Final Subdivision Plan

Percy Neall was present on behalf of his three lot subdivision located at S. Concord Road and Old Bailey Lane. Mr. Wilson read Mr. Miller's letter dated 1/16/98 approving the plan with one condition. The PC recommended that Lot 2 be reconfigured and requested that Mr. Neall go before the Zoning Hearing Board (ZHB) for a variance. Mr. Lang commented the lot layout is irrational, it may comply but it fails in terms of harmony. Mr. Lang felt approving the plan is setting a poor precedent and recommended that Mr. Neall go before the ZHB. Mr. Neall responded that he cannot go before the ZHB because he cannot claim a hardship and therefore has no case. Mr. Hall responded that the Board can take a position with the ZHB of not being in opposition. Mrs. Dewey asked Mr. Hall if the Board can grant a waiver. Mr. Hall replied that a waiver

cannot be granted for a zoning issue, only an ordinance issue. Mr. Wilson recommended tabling action on the plan until the February 3, 1998 meeting. Mr. Neall informed the Board that he would go before the ZHB, with the PC and Supervisors endorsement after the plan is approved and recorded and the fees paid by the township for the hearing. Mr. Miller stated that the PC suggested that Mr. Neall pursue variances to improve the lot configuration, and never implied that the township pick up the cost. The clock on the Neall subdivision expires 2/11/98.

Echo Hill II Final Subdivision Plan

Bruce Hill (Applicant) and P.J. Close (Kelly Engineers) were present on behalf of six lot subdivision located at Westtown-Thornton Road and Echo Hill Road. Mr. Wilson read Mr. Miller's letter dated 1/16/98 recommending approval of the final plan with conditions. Mr. Close informed the Board that all conditions have been addressed: Condition 2 regarding the Deed Restriction for the trail easement on Lot 1, and storm water management facilities on Lots 1 & 2 have been noted on the plan as part of "Note 16" on the title plan. Condition 7 stating "Notification and coordination with the Township is required prior to starting work in the vicinity of Echo Hill Road" has been added to the Title Plan. Mr. Lang questioned the trail width and stated a need to establish some clarity on the trail improvements. Mr. MacDonnell stated the Solicitor could approve language for the trail system so that the Township would have maximum flexibility. A motion was made (CL/WS) and unanimously carried to approve the plan with the Conditions and contingent upon the applicant recording a deed restriction pertaining to storm water management for Lots 1 and 2 and a deed restriction

pertaining to the trail easement following final review and approval by the Township Solicitor and Board of Supervisors.

ValleyDel Publications Lease Agreement

Mr. Adams reviewed and approved the lease for signature. A motion was made, seconded (PD/CL) and unanimously carried authorizing Mr. Wilson to execute the lease.

Resolution 1998-3

Mr. Rossiter stated the Municipal Records Manual requires the Township to declare its intent to follow the schedules and procedures for disposition of records. This is the first time the Township has taken this action, but the declaration of intent is a one time only requirement. A motion was made, seconded (CL/WS) and unanimously carried to approve Resolution 1998-3.

Resolution 1998-4

Mr. Rossiter informed the Board that in accordance with the Municipal Records Manual this resolution must list the materials that will be destroyed. A motion was made, seconded (CL/WS) and unanimously carried to approve Resolution 1998-4.

Bill List Approval

Mr. Lang questioned Sattherthwaithe's bill and asked Mr. Rossiter to determine if there is a waiver for agricultural use and that a percentage of their payment until they

detail the regulation. A motion was made, seconded (WS/PD) and unanimously carried to the [sic] approve the bill list.

Thornbury Park Commercial Center – Goose Creek Grill

Mr. Wilson asked for Board approval to allow Mr. Rossiter to proceed with the bids to replace the roof in accordance with the design review by Mr. Lang and Mr. Stevenson. The low bid total for the roof replacement is $6500.00. The lessee will contribute $3000.00 for the gable modification and the Township (lessor) will fund the remainder. A motion was made, seconded (CL/WS) and unanimously carried to authorize the Township Manager to go forward with the roof replacement. The final roof drawings from the lessee are subject to the review of Mr. Lang, Mr. Stevenson and Mrs. Tindall.

Office Computers – The township received an estimate in the amount of $7194.00 for two new computers, upgrading two computers, modem, printer, networking and labor. Mr. Lang asked Mr. Rossiter to obtain two competitive proposals. A motion was made, seconded (CL/RM) and unanimously carried to approve the purchase of computer equipment up to $7200.00 and secure two additional proposals for the same equipment already quoted.

PSATS Convention – A motion was made, seconded (CL/RM) and unanimously carried nominating Patricia Dewey as the voting delegate for the township at the Pennsylvania State Association of Township Supervisors Convention.

Hazardous Waste – Mrs. Dewey informed the Board that she will be attending a Hazardous Waste Collection Program meeting on 1/27/98. They are looking for sites in Bucks, Chester, Delaware Counties for establishment of a waste collection site.

Brandywine at Thornbury – Wastewater Treatment Plant

Mr. Lang referred to a letter dated 1/20/98 from David Linahan of YA. The preliminary cost estimate for the installation of the proposed "drip" system is $246,280 and does not include engineering or permitting. The Township would need to cover a short fall of approximately $100,000. Mr. Lang requested that Mr. Linahan attend the 2/03/98 meeting to explain his correspondence.

Public Comment

Residents from Thornbury Estates were present to protest Richard Acciavatti's request to rezone a residential parcel adjacent to the Commons at Thornbury commercial site.

Ronald Giacinto of 1240 Surrey Road read a three page letter objecting to any rezoning and cited the reasons why this change would have a negative impact on the community. Mr. Giancinto [sic] requested that his letter be made part of the minutes. Please note that Ronald Giacinto's letter dated January 20, 1998 is shown as Exhibit A to the minutes. Mr. Giacinto emphasized that the open pits must be filled in or capped and expressed concern that the metal cage surrounding the pumping station was topped with razor wire.

Stephen Levasseur of 129 E. Street Road, Yvonne Webster of 1249 Surrey Road, a resident at 1244 Surrey Road, and Robert Eichman of 1245 Wilmington Pike opposed any rezoning and asked the Board to take action regarding Mr. Acciavatti's failure to make the property safe. Virginia Hohenberger of 1242 Surrey Road informed the Board that the required fencing and barriers were never installed by Mr. Acciavatti and that the erosion problem is ongoing. Mud from CT is running into her backyard and has ruined her septic system. Mrs. Dewey asked Mrs. Hohenberger for permission to walk the property. Mrs. Hohenberger agreed and thanked Mrs. Dewey. Mr. MacDonnell stated this Board has been attempting to have Mr. Acciavatti fill in the open foundations even to the point of sending in our own trucks to do the work. Mr. Acciavatti should be advised that the Township will not consider any rezoning until the foundations are filled in and proper soil erosion control has been completed. Mr. Lang recommended clarifying what action must be taken, give a deadline and if not met cite Mr. Acciavatti. A motion was made, seconded (RM/CW) and unanimously carried that Mr. Acciavatti be notified that the Board of Supervisors will not consider any modification of the land use plan which involves rezoning of any piece of his property at Route 202 and 926 until the two foundations are filled in and effective soil erosion fencing is installed on the southern end of the property that must be approved by the Township Engineer.

Adjournment – A motion was made, seconded (CW/RM) and carried to adjourn at 9:50 P.M.

Respectfully submitted,

Constance Dulin
Township Secretary

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

– – –

THORNBURY NOBLE, LTD.	: CIVIL ACTION
Plaintiff	:
Vs.	:
THORNBURY TOWNSHIP, Chester County, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, and The members of the Board of Supervisors in their official capacity: PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A.W. WILSON, and ROBERT A. MacDONNELL,	:
Defendants	: NO. 99-CV-6460

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AUGUST 2, 2001

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Oral deposition of ALLAN BAUMHOLTZ, in the above captioned matter, held at the offices of Siana, Bellwoar and McAndrew, 941 Pottstown Pike, Chester Springs, Pennsylvania, commencing at 1:30 p.m., on the above date, before Bonnie Block, Court Reporter and Notary Public.

* * *

A. Yes, whatever the date was. We got started with our building right before the deadline, so whatever that was.

Q. Okay.

A. Yes.

Q. Did the five-year time limitation on your ability to build out the L-shaped strip mall, did that factor into the decision to build the L-shaped strip mall as opposed to pursuing the box supermarket?

A. As a result of all the delays that we faced, yes, that was actually one of them.

Q. You said as a result of all the delays. I'm asking about did there come a point in time where you said we are not going to pursue the supermarket, we are going to build out the L-shaped strip mall?

A. After the second attempt to put a supermarket in place, and that [35] would be with Super Fresh at this point, and where Super Fresh stated specifically that they will build within the existing Commercial B Zoning. And the response that we got from Super Fresh, when they went to the township to talk to them about things that they required, they got turned off. I mean, it's not that we walked away from anything. We didn't walk away from anything. We got shot down with Genuardi's. And I'm sure we'll get into that later. When Super Fresh came forward and they said, hey, we will build within however we can build it, we will build it. And then they came in with the impression from the township that it wasn't going to happen. And it was based on that that we decided the time

frame was such we couldn't afford to go for this so-called conditional use they were asking.

My position, through my attorney, was we had a vested right to do [36] what we were doing. The township was taking the position that, no, we had to go for a conditional use. I'm hanging out in left field. They're delaying us. I can't tell you how many times they had promised to hear a presentation from me that, for some strange reason, didn't make the docket. We'll hear you next month; we'll hear you next month. Months flew away.

Q. Who was your attorney?

A. Mary Ann Rossi.

Q. Okay. You said that Super Fresh came back to you, Thornbury Noble –

A. To John.

Q. – to John, okay, and said that the township says we have to go for a conditional use?

A. Oh, I'm sorry. I thought you were talking when they first came back in the end of '97. When they were leaving, yes.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VOLUME II

- - -

THORNBURY NOBLE, LTD.	:	CIVIL ACTION
Plaintiff	:	
Vs.	:	
THORNBURY TOWNSHIP, Chester County, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, and The members of the Board of Supervisors in their official capacity: PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A. W. WILSON, and ROBERT A. MacDONNELL,	:	
Defendants	:	NO. 99-CV-6460

- - -

AUGUST 10, 2001

- - -

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* * *

[217] BAUMHOLTZ-GONZALES

Q. Did you do any other work for him prior to becoming a limited partner in Thornbury Noble?

A. Real estate appraisals. I appraised a few of his properties.

Q. Are you a partner or limited partner with any other entities in which Mr. Acciavatti is a partner?

A. No.

Q. Are you involved in any other entities in which Mr. Acciavatti – when I say involved, either stock or in any of Mr. Acciavatti's businesses.

A. No, this is my only experience.

Q. When you were asked early on in your deposition, the first day of your deposition, about what happened between January of 1997 – actually, December of 1997 and July of 1998, you had talked about meetings you had with residents and some other concerns that you were trying to address before you, and this is my [218] term, got your ducks in order to make a presentation to the township?

A. Yes, sir.

Q. About how many meetings did you have with residents during that time period?

A. Never had the ability to meet everybody. My initial meeting was with Ron Giacinto. He eventually became the spokesman for the immediate neighbors. I should know their names. I met three of the five immediate residents, Eichman being one of them.

Q. Did you ever meet with Mr. McGovern, Kevin McGovern?

A. No.

Q. You said you met with Mr. Eichman?

A. Eichman.

Q. Did you ever meet with May Hornberger (phonetic)?

A. Yes. We discussed landscaping. And I met with Mrs. [219] McCleary and one other. Did you say Hornberger? I met Max and the wife. The wife is a landscape expert.

Q. The meetings that you had, and I assume you had more than one meeting with the residents, or was it just one meeting where everybody came?

A. No. No, I went to meet them. I, personally, went to meet them, to introduce myself and assure them that –

Q. I understand that. I just want to know –

A. I never met everyone together.

Q. Let me ask the question. I just want to get in and get out. Did you have more than one meeting with the residents?

A. I believe I did.

Q. Did you ever meet with all of the residents as a group at one time?

A. No. The only time I saw all [220] of them together was at the July meeting.

Q. Okay. You said you initially met John Giacinto and he eventually became the leader of that group of citizens; is that correct?

A. That's correct.

Q. When did you first meet with Mr. Giacinto?

A. That was June 4th, 1998.

Q. Before that time, did you ever talk with him?

A. I called a few times to set up an appointment.

Q. Had you had any substantive discussions with Mr. Giacinto before you actually met him?

A. No.

Q. When you met him, where did you meet him?

A. On the Thornbury Commons grounds.

Q. Was anybody else present for that meeting?

* * *

EXHIBIT 6

THORNBURY TOWNSHIP, CHESTER COUNTY
BOARD OF SUPERVISORS MEETING
APRIL 1, 1997

In attendance were Supervisors J. Christopher Lang (Acting Chairman), Paula Gowen, Robert MacDonnell and William Schmidt; Robert Adams (Solicitor); Ronald Miller and Robert Eichman (Planning Commission); Mahlon Rossiter (Township Manager) and approximately 12 guests.

Mr. Lang led the Pledge of Allegiance and called the meeting to order at 7:37 P.M.

Minutes Approval
A motion was made, seconded (PG/WS) and carried to approve the minutes of March 24, 1997 subject to changes on Page 2 and 4 as requested by Mr. Lang.

Bridlewood Farm – Phase 3B
Mary Ann Rossi and Zack Coburn were present on behalf of K. Hovnanian & Companies

Mr. Lang stated that the applicant granted the township an extension to April 8, 1997 for Phase 3B. After some discussion, Mrs. Rossi authorized an additional extension to April 15, 1997 for for action by the Board of Supervisors on Phase 3B. Mrs. Rossi stated that an alternate plan for 3B was delivered to the township on March 31, 1997, and a letter was sent today regarding the plan that was just submitted.

Ordinance 1997-4 and Ordinance 1997-5
Mr. Adams stated that the advertised ordinances authorize the issuance of general obligation notes in the amount

of $550,000 and $375,000. The ordinances must be executed in order to obtain the loan agreement proposed with the bank for the purpose of financing the park and the Thornbury Park Center. Mr. Adams reported that there is a debt service schedule attached to the ordinance which shows a fixed rate of 5.18% for the first seven years, and a variable rate of 70% of prime for the last 8 years. The bank prepared the schedule showing a capped variable rate of 12% because the Pennsylvania Community & Economic Development (DCED) requires presentation of the maximum interest rate. Mr. Adams stated that the adoption of the ordinances by the Supervisors must be advertised, and anticipates closing the loan by April 20, 1997. A motion was made, seconded (RM/WS) and carried to execute Ordinance 1997-4 ($550,000 Note) and Ordinance 1997-5 ($375,000 Note).

Thorncroft Woods

Mr. Ronald Hewes and Mr. Thomas Hewes were present to represent Thorncroft Woods.

Installation and Maintenance Agreement for Wastewater Disposal Systems – Mr. Rossiter stated that the building inspector, Paul Wolf inspected the reserve fields that had been staked out and on the strength of the building inspector's recommendation the agreement was released. Mr. Rossiter reported that Mr. Linahan was still concerned over the future use of the reserve fields and compaction of the ground in the reserve area. Mr. Hewes presented a letter dated 4/1/97 addressing Mr. Linahan's concerns. Mr. Hewes proposed to implement the following procedures: (1) Prior to issuance of each certificate of occupancy, the developer will supply the township with a copy of the Sewage Agreement prepared by Department of Environmental Protection (DEP), which has been executed by the

EXHIBIT 6

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BOARD OF SUPERVISORS MEETING
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Bridlewood Farm – Phase 3B
Mary Ann Rossi and Zack Coburn were present on behalf of K. Hovnanian & Companies

Mr. Lang stated that the applicant granted the township an extension to April 8, 1997 for Phase 3B. After some discussion, Mrs. Rossi authorized an additional extension to April 15, 1997 for for action by the Board of Supervisors on Phase 3B. Mrs. Rossi stated that an alternate plan for 3B was delivered to the township on March 31, 1997, and a letter was sent today regarding the plan that was just submitted.

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homeowner. (2) The developer will supply to the township an executed site plan signed by the future homeowner, detailing the location of the installed sewage disposal system and the replacement area, if required by Chester County Health Department (CCHD). (3) If any additional requirements/restrictions are required on a lot it will be noted on the site plan and no structure above or below ground will be permitted in the replacement field area. Mr. Hewes commented that two of the eight lots have sand mounds and that the reserve area for the sand mounds would not be disturbed.

Mr. Adams stated that there was no problem with the agreement, but DEP and CCHD have put the reporting responsibility on the homeowner and a monitoring requirement on the township with no authority. It is not up to the township to approve or disapprove this system, DEP issued the permit, not the township. Mr. Adams stated that some type of administrative process must be set up to insure that the inspections have been performed Mr. Schmidt questioned how a buyer of a resale property in Thorncroft Woods would be made aware of the maintenance agreement. Mr. Rossiter stated that the previous homeowner's plans would be on file in the township office. Mr. Adams recommended that if Mr. Hewes dedicates the road to the township a note should be put on the revised recorded plan that would give notice to the lot owner of these recommendations and the existence of these agreements. The plan is a permanent record and gives present and future residents "notice".

Mr. Lang stated that he wanted a note on the plan whether or not the township takes dedication of the road. Mr. Hewes reported that when this sewage agreement gets recorded it will be part of the title report Mr. Adams

agreed that the title report would show the conditions and that future homeowners could not claim, "no notice".

Escrow Release – Thorncroft Wood – Mr. Rossiter stated that Yerkes Associates made an inspection and had signed off for release of the escrow. A motion was made, seconded (RM/PG) and carried to release $43,034.00 of the $187,031.00 escrow amount, leaving a balance of $143,997.00.

Brinton Ridge Complex – Phase 8

Mrs. Rossi was present representing the Bozzuto Group on behalf of the Brinton Ridge Apartments.

Mr. Adams stated that he has reviewed the revised Condition of Final Approval and it appears to be comprehensive and incorporates all the changes recommended March 24, 1997. Mrs. Rossi reviewed the five changes to the Conditions as follows:

Condition 8 The applicant agreed to revise the plans to (a) Show the inset on the 1st floor of the club house building to be at least 4 feet. (b) The anchoring detail for the country casual bench shall be added to the plans. (c) The correct detail for exterior steps shall be provided. (d) The retaining wall detail shall be added to the plans. (e) Signage for the community shall be consistent with the specifications shown for Bozzuto's "Harborplace" condominiums located in Virginia.

Condition 9 Plans shall contain a note requiring that triple-glazed windows shall be installed on the east side of Buildings 4, 5, 4 7 and 8. In addition, the applicant shall conduct a noise study on the north and south sides of these buildings and install triple-glazed windows

wherever the noise study shows that the level of sound will exceed an outside level of 65 decibels and exceed 45 decibels inside.

Mr. Lang asked Mrs. Rossi if anyone advised the applicant that 65/45 is the correct decibel level. Mrs. Rossi stated that applicant did not run it past a consultant but agreed that the maximum acceptable decibel level would be subject to review and approval by a designated township consultant.

Condition 19 Mrs. Rossi agreed that no shrubs or trees shall be located within the utility easements, including all storm water, sanitary sewer and public water system right-of-way/easement areas, except for two trees at the entrance to the community.

Condition 22 Mrs. Rossi agreed that the applicant shall provide a note on the plan indicating that no trees, shrubs, structures, fencing or other potential obstructions shall be placed between the pool fence and building 5 and 6 that would reduce the unobstructed distance between the fence and those building less than 12', except as may be approve by the township's Fire Marshal.

Condition 27 Mrs. Rossi agreed that the applicant will submit a basin planting plan designed to introduce vegetation within the basin to promote a natural appearance provided that the function of the basin will not be impaired by any vegetation and that the Chester County Conservation District approves the plan.

A motion was made, seconded (WS/PG) and carried to approve Phase 8 based on the five changes to the Conditions

of Final Approval and any additional language deemed appropriate by the township's solicitor.

Final Sewage Agreement – Phase II

Mr. Adams reported that several changes were made to the agreement because some items were not applicable and that David Linahan agreed to the modifications. Mr. Adams noted that Mr. Linahan will determine the bond amount and upon receipt of the financial security from the applicant, the township can execute the Final Sewage Agreement for Phase II.

Faucett Tract

Randall Schauer (attorney), Kevin Lahn and Robert Waters (R. J. Waters & Associates, Inc.) and Robert Plucinek (Chester Valley Engineers) were present to present an informal sketch plan for the Faucett tract located at the northeast corner of Route 202 and Dilworthtown Road.

Mr. Lahn stated the 25 acre property has 6.3 acres zoned Commercial which is situated in Birmingham Township, and the balance of the property lies in Thornbury Township which is zoned Agriculture/Residential. Waters & Associates propose to develop a neighborhood shopping center anchored by a supermarket and would include several small convenience and service oriented tenants as well as a freestanding bank, two freestanding restaurants and a drug store. The center would be similar to the Shoppes at Longwood which was developed and owned by Waters & Associates. Mr. Lahn informed the Supervisors that they have had preliminary discussions with Mr. Iacobucci of the Greens at Penn Oaks regarding a sewer and water tie-in. Mr. Lahn said they are not proposing a high density center for the Faucett tract. The proposed center will cover the same size land area as the Shoppes at

Longwood. Mr. Lang asked Mr. Lahn if they considered developing the existing commercial center at Routes 202 and 926. Mr. Lahn responded that the site is not large enough to accommodate a super market. Mr. Lang told the applicants that they must convince the township that there is significant reason to rezone the Faucett tract. Mr. Lang asked what will happen to the historic properties on the proposed site. There is an 18th century house in the back as well as the 19th Century Faucett home. Mr. Lang recommended the applicant incorporate the historic structures into the proposal. Mr. Lang commented that he would be against Route 202 looking like a commercial strip. Mr. Schmidt stated that the township has a commercial site three-quarters of a mile away on Route 202 that is only partially developed, therefore, the Supervisors would need justification to rezone this tract from Agriculture/ Residential to Commercial.

Mr. Miller commented that whether the tract is zoned residential or commercial, the Official Township Map (OTM) has some items that are specific to this property. There was discussion on the proposed road that is shown on the OTM, and suggestions on how to connect a road from the Greens at Penn Oaks, through the Stoltfus property, through the proposed commercial center and onto Dilworthtown Road. Mr. Lahn stated that they will meet with Birmingham Township and after the meeting will put together a revised package to present to the township. Mr. Lang recommended that the applicants try to maintain some character on the site.

Park & Recreation Commission

Mrs. Tindall reported on the successful Easter Egg Hunt held at the Concept School on March 22, 1997. Mrs. Tindall stated that Mr. Rossiter, Mrs. Dewey, Mr. Comitta

and herself met on March 31st work on the park proposal bid package and hope to have it ready for presentation by the April 15th Board of Supervisors meeting for action.

Dallett – Agreement of Sale
Mr. Rossiter asked the Board to review the draft Agreement of Sale for the purchase of 26 acres of open space along Cheyney Road prepared by Richard A. Fineman, attorney, for the Dallett family. This is step one of acquisition plan to consummate the purchase by early fall. Mr. Lang suggested the Board read the agreement and give input to Mr. Rossiter by next week.

Mr. Schmidt questioned if there was the potential of environmental problems on the Dallet tract and suggested that the township should look into doing a Phase I. Mr. Rossiter stated that the township must go through the whole subdivision process.

Westbourne Road – Mr. Lang reported that the township owns property along Westbourne Road and that there is a dangerous shoulder along this road. Mr. Lang suggested evaluating the speed limit and posting warning signs where the shoulder of the road falls off. Mr. Lang stated that the road is getting more traffic and the township should take action as quickly as possible. Mrs. Gowen stated that the speed limit along Westbourne Road is 25 MPH. Mr. Rossiter agreed to follow up on Mr. Lang's recommendation.

Thornbury Park Center – Consultants
Discussion on hiring a qualified realtor or consultant to secure a tenant for the former Brightside Market took place. The Board recommended that the township should look into interviewing several professional realtors and consultants for the purpose of finding a qualified tenant,

and in addition develop an appropriate lease package. It was agreed to hold a work session on April 15, 197 [sic] at 5:30 P.M. to meet with Weichert Realtors, R. J. Waters & Associates, Lou Termini and Thomas Spackman.

Bill Approval

A motion was made, seconded (RM/PG) and carried to approve the bill list as presented.

Announcements

Historic Preservation Committee will meet on Monday, April 7, 1997 at 7:30 P.M.

Thornbury Township, Delaware County, will meet April 16, 1997 at 7:00 P.M. to discuss the "R-3 High Density Ordinance impacting the eastern section of the Dallett tract.

Cheyney University – Inauguration of the President – April 19, 1997 at 11:00 P.M. Mr. Rossiter stated that Mr. Wilson will represent the Township.

Zoning Hearing Board – date to be determined to hear Echo Hill II zoning variance request.

Brandywine Battlefield Park Visitor's Center, April 20, 1997 at 3:00 P.M.

Other Business

Mr. Rossiter reported that a pre-construction meeting for Phase 7 was held. Mr. Gregory Balbirnie of Robert Bruce Realtors expects to start building as soon as Hovnanian paves Militia Hill Road. Mr. Rossiter stated that applicant asked if the Design Review Committee (DRC) wished to review their plans. Mr. Lang stated he would like the applicant to provide some advance input. Mr. Lang requested that the developer submit 8 scale elevations and plan view to the DRC prior to meeting with the developer on Phase 7's architectural plans.

Mr. Schmidt stated that every two weeks there is supposed to be a review on the construction progress of Bridlewood Farm. Mr. Rossiter agreed that a pre-construction meeting needs to be held and that he would contact the applicant to request a meeting.

Adjournment – A motion was made, seconded (RM/PG) and carried to adjourn at 9:37 P.M.

Respectfully submitted,

/s/ Constance Dulin
Constance Dulin
Township Secretary

EXHIBIT 7

Minutes, April 9, 1997

Mr. Miller requested Mr. Richman and Mr. Speidel to review the sewage agreement ordinance package sent by DEP and report back to the Commission on their findings. Mr. Miller stated that further study and some initial reaction is needed to determine whether to go forward with this ordinance.

Landscapes

Mr. Miller reported that Mr. Eichman, Mrs. Iacovelli, Mr. Wilson, Mr. Rossiter and himself met with Mr. Ray Sachs from the Chester County Planning Commission (CCPC) and reviewed his report on March 20, 1997. Mr. Sachs stated that the township's Comprehensive Plan was basically consistent in terms of goals, etc., however felt the plan was old and incomplete. The County has the funds to update the township's Comprehensive Plan. Mr. Miller recommended amending the Comprehensive Plan to include the township's Open Space Plan. At present there are two separate plans that should be incorporated. Mr. Sachs suggested that the township's Cluster Ordinance could be improved, and also that Thornbury should review the method of handling storm water discharge and recommended a more natural ground water approach. Mr. Miller stated that another suggestion was that the Subdivision Ordinance could include an open space requirement for each new subdivision that is submitted. If the developer does not want to provide open space then the applicant would have to pay a one time fee that would fund other open space areas.

Mr. Eichman questioned the possibility of soil contamination in the open space areas that the township is acquiring. Mr. Rossiter replied that the Dallett contract provides

that the township go through a "due diligence" of a Phase One, if the site is contaminated, the township does not assume the purchase.

Mr. Miller asked Mr. Heinzelmann and Mr. Sweeney to focus on "ordinance language". The need for this focus has been a result of problems that have come to light during subdivision review, and one example would be the Pohl tract that allowed the conveyance of sewage from one lot onto another property.

Other

Zoning Hearing Board – Mr. Miller reported that Echo Hill II has made application to the Zoning Hearing Board. A date for the hearing has not been determined.

Faucett Tract – Mr. Miller updated the members on a presentation to the Board of Supervisors by R. J. waters & Associates to develop the Faucett tract which is located at the northeast corner of Route 202 and Dilworthtown Road. Approximately five commercial acres are located in Birmingham Township, and twenty +/- agricultural/ residential acres are located in Thornbury Township. The developer proposes building a shopping center similar to the Shoppes at Longwood in Kennett Township and has asked about rezoning the property in Thornbury to a commercial use. Mr. Miller reported that the Supervisors reaction was lukewarm to the proposal.

EXHIBIT 8

THORNBURY TOWNSHIP, CHESTER COUNTY BOARD OF SUPERVISORS MEETING APRIL 15, 1997

In attendance were Supervisors Charles A. W. Wilson (Chairman) J. Christopher Lang (Vice-Chairman), Paula Gowen, Robert MacDonnell and William Schmidt; Robert Adams (Solicitor); Michael Conrad (Yerkes Associates); Ronald Miller and Robert Eichman (Planning Commission); Patricia Dewey and D. J. Tindall (Park & Recreation); Mahlon Rossiter (Township Manager) and approximately guests.

Mr. Wilson led the Pledge of Allegiance and called the meeting to order at 7:34 P.M.

Minutes Approval
A motion was made, seconded (CL/WS) and carried to approve the minutes of April 1, 1997. Mr. Wilson abstained.

Police Report
Chief John Dumond of the Westtown-East Goshen Police Department (WEGO) reported low police activity in the month of March with a total of 64 calls, many of which were residential alarms. Chief Dumond reviewed the prisoner escape operation and advised that there would be a joint meeting to critique the operation. Mr. Lang questioned the communication procedures and noted that the township had not been properly advised of the incident.

Mr. MacDonnell read a letter of commendation addressed to the Chief by the Board of Supervisors in appreciation of the actions and successful conclusion of the operations by WEGO.

Brinton Ridge Apartments – Phase 8
Mrs. Rossi was present to represent the Bozzuto Group. Mr. Adams informed the Board of Supervisors that he had completed two updated corrections to the Conditions of Final Approval from the last meeting and that the documents are ready for signature. The Board of Supervisors agreed to execute the "Revised" Conditions of Approval that were approved April 1, 1997.

Dallett – Proposed Agreement of Sale
Mr. Adams stated that he had examined the proposed agreement and found it was complete and well written, but that he could not offer any final conclusion until the "exhibits" referred to were obtained. Mr. Lang stated that the contingency period of thirty days to investigate possible environmental issues was too restrictive and asked to have the agreement language adjusted, or the time extended, to give the township more time to determine if remediation was necessary. Mr. Rossiter was requested to communicate with the attorneys who had prepared the agreement to expedite the submission of all "exhibits" and to address the contingency issue mentioned by Mr. Lang.

Bridlewood Farm – Phase 3B
Mary Ann Rossi (attorney), Elizabeth Hurtusbie, Esq. and Zack Coburn (K. Hovnanian) and Gary Vecchio (Taylor, Wiseman & Taylor) were present to represent the applicant K. Hovnanian & Companies.

Lengthy dialogue followed regarding Phase 3B. [*The entire discussion and proceedings of the Phase 3B decision were documented by a Court Reporter and the testimony offered is on file at the township office.*] The Board adjourned to executive session to confer with Mr. Adams on some of the legal issues associated with this application. Mrs. Rossi requested that the Board vote on 3B as proposed by the

Planning Commission with amendments. A motion was made and seconded (PG/WS) for approval of Phase 3B with the conditions as submitted by the Planning Commission and as amended, and to include the exclusion of 6B. Mr. Wilson – In Favor. Mr. Lang – Opposed. Mr. MacDonnell – Abstained. Mr. Adams clarified for the record that the March 13, 1997 final draft of the Conditions of Final Approval that has been under consideraton [sic], and that draft, including the waiver attached thereto as the last item, minus the condition 6B is the decision of the Board. Mr. Wilson stated that is correct.

Executive Session

Mr. Wilson announced that the Board had a meeting preceding the Supervisors public meeting at 5:30 P.M. The purpose of the executive session was to interview Realtors and Consultants to assist the township in the leasing of the empty convenience store adjacent to the Westtown Post Office. Following the interviews the Board arrived at a decision to allow Mr. Louis Termini of Westtown Associates, Inc., West Chester, a forty-five day period to find a suitable tenant at the commercial center.

Park & Recreation Commission

Mrs. Dewey advised the Board that Mr. Thomas Comitta was still in the process of preparing bid documents and has been delayed by the receipt of suitable contour mapping. Mrs. Dewey asked the Board for permission to have the plan reviewed by a sub-committee consisting of Mr. Rossiter, Mr. Comitta and herself and then forwarding to the Chester County Parks & Recreation for review. After comments are received from the County, the Supervisors will have an opportunity to review and approve the entire bid package.

Mrs. Dewey announced that a park clean up activity was scheduled for April 27, 1997 from 1:00 to 3:00 P.M. at the Thornbury Park Center. Volunteers would be solicited by means of a flyer to be prepared by the township office.

Resolution 1997-3-A

Mr. Rossiter explained that with the adoption of Ordinance 1996-6 governing Fences, Walls and Screens, it has become necessary for residents to file for a building permit. Since there was no fee schedule to provide reimbursement for the inspections, this Resolution was being proposed to recover those costs.

A motion was made, seconded (PG/WS) and unanimously carried to adopt Resolution 1997-3-A.

Planning Commission

Mr. Miller reported on current activity within the Planning Commission.

Phase 3A – Bridlewood Farm – Mr. Miller informed the Board that the applicant has agreed to "conditions" suggested by the Planning Commission and is investigating an easement onto the adjacent Johnson property. Mr. Miller and Mr. John Hall will meet to draw up the final Phase 3A Conditions of Final Approval for review by the Planning Commission at their meeting on May 14, 1997, and will be formally presented to the Supervisors for action at their May 20, 1997 meeting.

Phase 5A – Bridlewood Farm – Mr. Miller reported that the review is scheduled to start with the Commission's May 14th meeting.

Mr. Miller questioned the status of K. Hovnanian's position regarding the use of Thomas Comitta Associates. Mrs. Rossi replied that the position was unclear at this time.

Mr. MacDonnell requested Mr. Rossiter to write a letter to Hovnanian stating the Board's position on using Mr. Comitta and expecting payment.

Sewage Enforcement Ordinance – Mr. Miller related that preparation is still in the discussion stage, however the Commission will follow through.

Treasurer's Report
A motion was made, seconded (PS/WS) and unanimously carried to approve the Treasurer's Report.

Bill Approval
A motion was made, seconded (WS/RM) and unanimously carried to approve the bill list as submitted.

Public Comment
Mr. MacDonnell requested the township office get samples of other township ordinances limiting hours of construction operation, particularly on weekends. Comments have been received concerning early hours of weekend operation at Bridlewood Farm.

Mr. MacDonnell led a Board discussion on the merits of R. J. Waters & Associates presentation for rezoning the property adjacent to Dilworthtown Road and Route 202 intersection. There was a general consensus that the Board was not interested in rezoning for such a massive operation. Mr. Rossiter was requested to check with Birmingham Township to learn how the proposal from the developer was received by Birmingham, and advise R. J. Waters of the Board's low interest in this project.

Thorncroft Woods
Mr. Ron Hewes, builder and developer of Thorncroft Woods, again adddressed [sic] the Board regarding the proposal to make the private road on this site public. The cost of

building this road to township specifications would result in $65,000 additional cost. Mr. Hewes informed the Board that he had determined that there was room to provide for two more lots on this site which had been previously held as open space between two pods of development. Mr. Hewes proposed that if these two lots could be included as buildable lots on the plan, that he would be able to generate sufficient revenues to build the road to township specifications. Mr. Wilson encouraged Mr. Hewes to present these fact in a sketch plan to the Planning Commission at their next meeting for consideration.

Adjournment

A motion was made, seconded (PG/WS) and unanimously carried to adjourn the meeting at 10:55 P.M.

Respectfully submitted

Mahlon Rossiter
Township Manager

EXHIBIT 9

THORNBURY TOWNSHIP, CHESTER COUNTY
BOARD OF SUPERVISORS MEETING
MAY 6, 1997

In attendance were Supervisors Charles A. W. Wilson (Chairman), Robert MacDonnell and William Schmidt; Robert Adams (Solicitor), Ronald Miller and Robert Eichman (Planning Commission), D. J. Tindall (Park & Recreation) and Mahlon Rossiter (Township Manager).

Mr. Wilson led the Pledge of Allegiance and called the meeting to order at 7:43 P.M.

Minutes Approval
A motion was made, seconded (RM/WS) and carried to approve the minutes of April 15, 1997.

Bridlewood Farm
Proposed Resolution to Amend Township's Current Act 537 Plan – The Board discussed Mr. David Linahan of Yerkes Associates' letter dated 5/5/97 regarding the township's current approved Act 537 plan for the Bridlewood Farm project from a seasonal spray irrigation/stream discharge system to a year round stream discharge system. Mr. Linahan stated that there is no requirement to use spray irrigation, only the existence of local preferences to favor the spray method over stream discharge. Mr. Linahan recommended that the Township distribute a copy of the proposed resolution to the Chester County Planning Commission (CCPC), the Chester County Health Department (CCHD) and the Thornbury Township Planning Commission (TTPC), as well as advertise in a newspaper of general circulation, that the township proposes to amend its Act 537 Plan. Mr. Schmidt stated the plan was designed for spray irrigation but stream discharge could

be more advantageous. Mr. MacDonnell recommended moving forward with advertising the proposal to amend the Act 537 Plan and request Mr. Linahan testify as to what the differences are between spray irrigation and stream discharge in order for the Board to react. A motion was made, seconded (WS/RM) and carried to advertise and move forward with the proposed Resolution to amend the Township's Act 537 Plan.

Roadmaster

Mr. Schmidt stated every two years the township goes out for road work bids. The bid includes general road work such as patching pot holes, replacing signs, etc. Mr. Schmidt reported that four bids were submitted and they were opened and read as follows:

Rittenbaugh, Inc., Phoenixville, PA: Front End Loader/ Backhoe $50/Hr, Dump Truck (10 Ton) $45/Hr, (3 Ton) $20/ Hr, Skilled Labor $30/Hr, Unskilled Labor $25/Hr.

Martin Bros Excavation, Lima, PA: Front End Loader/ Backhoe $35/Hr, Dump Truck (10 Ton) $30/Hr, (3 Ton) $20/ Hr, Skilled Labor $18/Hr, Unskilled Labor $15/Hr.

Steve Botella, Glen Mills, PA: Front End Loader/Backhoe $24.75/Hr, Dump Truck (10 Ton) $22.50/Hr, (3 Ton) $19.50/ Hr, Skilled Labor $20.50/Hr, Unskilled Labor $12.50/Hr.

John Neff Construction, Westtown, PA: Front End Loader/ Backhoe (A) $25/Hr – (B) $20/Hr, Dump Truck (33,000 GVW)) $20Hr, (3 Ton) $15/Hr, Skilled Labor (A) $15/Hr – (B) $13.50/Hr, Unskilled Labor (A) $12.50/Hr – (B) $10/Hr.

After a review and tabulation of the proposals, a motion was made, seconded (WS/RM) and carried to award the road work contract for the years 1997/1998 to the low bidder, John Neff Construction.

South New Street

Mr. Rossiter informed the Board that improvements to South New Street in Birmingham Township consist of widening the road to a 30' paved surface. The widening stops abruptly at the township line with no tapering or transition to the original 16' cartway in Thornbury Township. Mr. Rossiter asked Yerkes Associates (YA) to inspect the road construction. Mr. Giannantonio of YA reported that increased water discharges resulting from the widening will have a major impact on the stream embankment and could undermine the end of the road culvert that exists there now. If no storm drainage is provided to carry the runoff that will be generated by 2,500 L.F. of roadway (1600' in Birmingham, 900' in Thornbury) major erosion will occur wherever that flow leaves the paved surface. Mr. Giannantonio consulted with Jim Hadfield (Birmingham's engineer) and requested Birmingham put in an additional drain so that any water would not be from the top of the hill. Mr. Rossiter stated that Thornbury must widen S. New Street to eliminate the funnel effect. Mr. Giannantonio felt the cheapest way to do this work is to have the contractor (now working on New Street) to continue the work into Thornbury. The Board of Supervisors authorized Mr. Rossiter to follow through on obtaining a bid from the Birmingham contractor for the widening of S. New Street.

Mellon Bank Business

Disposition of Loans for $550,000 and $375,000 – Mr. Rossiter requested the Board to make a decision on where to deposit the funds which will be received May 7, 1997. Mr. Rossiter suggested investing the money in a three month CD at a rate of 5.45% in Mellon Bank. Mr. MacDonnell requested Mr. Rossiter to investigate other lenders to try and negotiate a better rate of interest for the

township. Mr. Rossiter and the Board agreed with Mr. MacDonnell.

Change of Banking from PLIGIT & 1st National – Mr. Rossiter recommended switching the township's depository to Mellon Bank. There are more advantages and the cost and interest are the same. Mr. Wilson agreed that the change to Mellon should make record keeping easier for the township. A motion was made, seconded (CW/RM) and carried to remove the township's monies from PLIGIT and 1st National Bank to Mellon Bank.

Thornbury Commercial Center – Lease Proposal – Mr. Wilson stated that the Board would be going into an Executive Session regarding real estate issues following the meeting.

Berkheimer Associates Contract – Letter from Rick Smith of East Goshen Township regarding the contract with Berkheimer Associates that expires December 31, 1997. Mr. Smith asked Thornbury to notify him by the end May stating whether the township would be interested in retaining Berkheimer Associates for collection of the Earned Income Tax. A motion was made, seconded (WS/RM) and carried to extend the contract with Berkheimer Associates for the collection of the township's Earned Income Tax for 1998

Chester County Task Force to Prevent Violence – A letter was read from state Representative Elinor Taylor requesting the township's support to explore ways to prevent violence in Chester County. The Conference will be held on October 22, 1997 at the Holiday Inn in Lionville. Mr. Wilson suggested that the township purchase two lunches at $10 each to support the Conference

Thorncroft Woods
Ron Hewes (developer) and Wayne Grafton (engineer) were present to represent the Thorncroft Woods subdivision.

Mr. Grafton itemized the changes to the original subdivision plan of Thorncroft Woods. The revised sketch plan dated May 5, 1997 shows (1) a 20' cartway with rolled curbing, (2) the island in the middle of the cul-de-sac has been reduced in size at the request of the Fire Marshal, (3) the plan has gone from 8 lots to 10 lots and (4) there will be additional inlets and basins. Mr. Grafton stated the Ordinance calls for a 24' wide cartway with rolled curbs, however, the subdivision enters onto Dilworthtown Road which is only 16' wide. There was discussion that Mr. Hewes might consider an 18' cartway as opposed to a 20' width to cut down on impervious coverage. It was the Board's opinion that the cul-de-sac should retain the center island and that an 18' cartway with rolled curbs and additional inlets would be preferred over the 20' wide road, but Yerkes Associates would need to validate the proposal. Mr. Hewes thanked the Supervisors and informed the Board that the sketch plan will be presented to the Planning Commission on May 14, 1997.

Treasurer's Report & Bill Approval – A motion was made, seconded (RM/WS) and carried to approve the Treasurer's Report and Bill List.

Greater West Chester Intergovernmental Committee
Mr. Wilson and Mr. Rossiter stated they would try to attend the meeting on May 8, 1997.

Executive Session The meeting was temporarily adjourned at 8:25 and reconvened at 8:50 PM.

Faucett Tract

Randy Schauer (Attorney), Robert Plucienik (Chester Valley Engineers), Kevin Lahn and Robert Waters (Water & Associates – Developer) were present to represent the proposed shopping center at Route 202 and Dilworthtown Road.

Mr. Schauer reported that Waters & Associates (W&A) went before the Birmingham Township Planning Commission (BTPC) to present their plans for a shopping center and were generally well received. The BTPC stated they would like to have the historic structure restored as a restaurant. Mr. Schauer stated that the restaurants they have talked to are not interested and desire a building that is in harmony with the shopping center. There would be competition from the Dilworthtown Inn across the street, and there would be difficulty in securing a liquor license. W&A has retained an architect to study the structures on the site and meet with the Birmingham Historical Board. Mr. Schauer told the Board that it is their intention to develop the Birmingham property even if they do not build in Thornbury.

Mr. Lahn discussed their study and detailed how a commercial center would have a positive economic impact on the township versus more residential homes. Mr. Lahn presented a landscape sketch plan of the site and explained that the W&A proposes a 50'-75' buffer along Route 202 compared to the Longwood Shopping Center's 25' buffer. Mr. Lahn recommended that the proposed street from Dilworthtown Road into Penn Oaks should run behind the center. W&A met with Mr. Stoltzfus and Mr. Iacobucci and neither of them thought they would benefit from the proposed road. Mr. Lahn told the Board if the township rezones the property to commercial and decides

against building the road, in return W&A would make a donation to the township. Mr. Lahn discussed the need for another super market in this vicinity due to the increase of new home construction surrounding Route 202. Mr. Lahn stated that parking is already a problem at Westtown Village and Glen Eagle and that Thornbury/Birmingham could easily support a super market and shopping center. Mr. Lahn reported that W&A manage twenty shopping centers, and the Thornbury proposal has the lowest square foot density per acre: Westtown is 7600 s.f. per acre, Glen Eagle is 6100 s.f per acre, Longwood is 5400 s.f per acre and Thornbury is 4800 s.f per acre. Mr. Lahn explained that the Commons at Thornbury cannot accommodate an anchor store because the parcel is not large enough and that an anchor is needed to attract other retailers.

Mr. Schauer informed the Board that W&A proposes to file a petition for rezoning. Mr. Schmidt stated that he did not see a need for another shopping center in the township and that the only way he would have any interest is for the township to acquire a similar piece of property for open space; further, historic buildings are being sacrificed and the open green space would be turned into an impervious area.

Mr. MacDonnell agreed that the Faucett site does not have to be developed, nor is there a need to rezone the tract. The message is that the Board is not a particularly receptive audience.

Mr. Wilson stated that the Faucett site is at the remote corner of the township and the Board is not beyond being convinced, however, the Supervisors have to really believe there would be a true benefit to the township for a trade off to allow this to be rezoned.

Planning Commission
Mr. Miller reported that the Planning Commission meets on May 14, 1997. Mr. Miller asked the Board if the Commission can continue using Mr. Comitta as a consultant for the Bridlewood review. Mr. Wilson stated that Mr. Comitta is the township's consultant and Mr. Comitta will continue.

Adjournment
A motion was made, seconded (CW/RM) and carried to adjourn the meeting at 10:00 P.M.

Respectfully submitted,

Constance T. Dulin
Township Secretary

EXHIBIT 10

THORNBURY TOWNSHIP, CHESTER COUNTY
BOARD OF SUPERVISORS MEETING
JUNE 17, 1997

In attendance were Supervisors Charles A. W. Wilson (Chairman), Paula Gowen and William Schmidt; Robert Adams (Solicitor), David Linahan (Yerkes Associates), Robert Eichman (Planning Commission), Patricia Dewey and DJ Tinall (Park & Recreation), Thomas Comitta (Land Planner) and Mahlon Rossiter (Township Manager).

Mr. Wilson led the Pledge of Allegiance and called the meeting to order at 7:34 P.M.

Minutes Approval
A motion was made and seconded (RM/CW) and carried to approve the minutes of the meetings held May 27, 1997 and June 3, 1997.

Police Report
Detective Sgt. Gorman presented the Monthly Activity Report for May 1997. In response to Mr. MacDonnell's inquiry, Sgt. Gorman confirmed that the total calls for all three townships are up from last year. Sgt. Gorman agreed and explained that there has been an increase in the number of 9-1-1 calls as well as a growth in population.

Brandywine at Thornbury (Bridlewood Farm)
Mary Ann Rossi (Attorney) and Zack Coburn (K. Hovnanian) were present on behalf of the applicant, K. Hovnanian Companies of PA, Inc.

Final Sewage Facilities Agreement – Mrs. Rossi stated the agreement has been reviewed by Yerkes Associates (YA) and approved previously by the Supervisors. Mrs. Rossi informed the Board that Page 7 had been revised. In the

event the applicant or Homeowners' Association receives an offer from a PUC-regulated utility company for the purchase of the sewage system, a thirty (30) day written notice shall be given to the township to exercise its right to make a decision regarding acquisition of the plant. Mr. Wilson and Mr. MacDonnell questioned whether the thirty day notice would provide adequate time for the township to react. Mr. Adams stated that the document is acceptable but cannot be executed until the Bond is in place. Mr. Linahan reported that YA provided the township and applicant a cost estimate for the Bond in the amount of $1,795,200. A motion was made, seconded (WS/PG) and carried to approve the Final Sewage Facilities Agreement contingent upon changing Page 7, Paragraph 14's thirty day (30) notice to a sixty (60) day notice. Upon receipt of the executed Facilities Agreement and Bond by the applicant, and review by the Solicitor, Mr. Wilson was authorized to sign the Agreement on behalf of the Board.

Mrs. Rossi informed the Board that it will not be necessary to sign final plans for Phase 2. Phase 2 is a lot that was created for the sewage facility and is part of Phase 1.

Mrs. Rossi stated that the applicant is amending the Master Declaration Agreement to conform with the new Uniform Planned Communities Act and also the proposed name change from Bridlewood Farm to Brandywine at Thornbury.

Phase 3A

Mrs. Rossi requested the Board to sign the plans as approved for Phase 3A even though the revisions referenced in her letter of June 17, 1997 to the Board are not completed. Mr. Adams recommended holding the plans in escrow and not to release them for recording until Mr.

Conrad determines the bond amount for the Road Improvements Agreement and confirms that the revisions to the plan have been made to comply with the Conditions. Mrs. Rossi stated that the applicant cannot record the deeds until the plan is recorded. A motion was made, seconded (PG/WS) and carried to sign the plans for Phase 3A as recommended by Mr. Adams, and to approve the Road and Improvement Construction Agreement and Bond for execution when presented. Mr. Wilson in favor.

Fence Proposal

Mr. Coburn informed the Board that the applicant is proposing to fence in the rear properties of the townhomes on three sides for privacy. Mr. Coburn stated that the fences would go back 12' and across the width of the home for 25'. The fence would start at a height of 6' from the rear of the home and taper down to 4' high with a gate. Mr. Coburn asked the Board how would they like the applicant to proceed on this request. Mrs. Gowen questioned if this is something people want. Mr. Wilson expressed surprise at the proposal of closing in the backs of the homes since the applicant had been advocating open space behind all of the houses. Mr. Adams asked Mrs. Rossi if the Declaration prohibits fencing. Mrs. Rossi responded that she would review the Declaration. After some discussion the Board agreed that the fencing proposal should go through the Design Review Committee. Mr. Coburn asked if the Board would object to a stand alone privacy fence. The Board did not have an objection to a stand alone fence.

Signage

Mrs. Rossi stated that the applicant is proposing two identification signs on the Route 202 entrance of 10' X 50', and two identification signs on the Route 926 entrance of

6' X 20'. In addition, one community identification sign at the Martingale Road and Route 202 access of 6' X 20'. Mrs. Rossi requested the Board to waive the requirements of Section 1210.4.F that limits development name signs to one per entrance not to exceed 4' in height. Mrs. Rossi commented that Bozzuto and Hovnanian will share the community identification signs. Mrs. Gowen stated that she is against permanent signs. Mr. MacDonnell opposed the size of the signs. Mr. Schmidt responded that the signs dominate the landscape and breaks the township into small cliquish segments. The signs should be tasteful and understated. Mr. Gowen told the applicant that she would not object to "temporary" signage to introduce home buyers to the community. Mrs. Rossi thanked the Board for their feedback. Mr. Adams stated that 50 s.f. should be the maximum size.

Act 537 Plan

Mr. Wilson stated that YA prepared a Resolution for Plan Revision to amend the township's current approved Act 537 for Bridlewood Farm from a seasonal spray irrigation/stream discharge system to a year round stream discharge system. Mr. Rossiter reported that Mr. Linahan and himself met with Wayne Clapp, Maria Gorman and Heidi Hoegger of the Chester County Health Department (CCHD) to discuss the plan revision. The County and State are encouraging spray irrigation but cannot regulate the township to comply. Mr. Linahan and Mr. Adams cautioned that the plan revision could result in adjacent land owners and neighboring municipalities appealing full stream discharge, and that the township could incur legal costs in defending itself.

Mr. Linahan posted a plan that showed the five zones earmarked for spray irrigation. Seven zones are projected,

but five zones have permits at this time. Mr. Linahan suggested that if the township wants to go forward with the revision Thornbury must advertise the Resolution, formally send it to the Chester County Planning Commission, CCHD and the Township Planning Commission. Mr. MacDonnell recommended that a substantial presentation statement prepared by the township should accompany the amendment request. Mr. Linahan noted that all comments received by the township must be in writing, and Thornbury Township in turn must respond in writing, adopt the Resolution, present a narrative from the township and send the entire package to the Department of Environmental Protection (DEP). DEP has 120 days to respond. Mrs. Rossi stated that the developer has no position on the Plan Revision. The applicant has an approved system and is ready and willing to offer dedication of the facility to the township. Mrs. Gowen asked if full stream discharge would elevate the stream. Mr. Linahan replied that the elevation would increase only 3/16" which is the thickness of a match stick and that there would be no hydraulic impact.

Mr. Linahan suggested if the township stays with spray irrigation they could look into the beneficial use of the spray irrigation, such as watering the berms and the green areas. Mrs. Rossi stated if the direction from the township is to install the spray heads in the berm instead of a field, she is confident that her client would consider it. Mr. Linahan stated that if the township goes with the Act 537 Plan Revision, the spray fields should be eliminated altogether.

Mr. Wilson recommended formation of sub-committee to review this issue prior to any further action. A sub-committee

of the following members was formed: Mr. MacDonnell, Mr. Schmidt, Mrs. Tindall and Mr. Rossiter.

Park & Recreation Commission

Mrs. Dewey reported that Waters & Associates (W&A) met with the Park & Recreation Commission (P&R) regarding W&A's request to rezone the Faucett tract, at the corner of Route 202 and Dilworthtown Road, to a commercial shopping center. W&A asked the Commission what they would desire as a trade off for open space to replace the Faucett tract. Mrs. Dewey stated that it is P&R's recommendation to acquire the 30 remaining acres at the Dallet tract, including the house and barn, and to have both structures stabilized.

Park Bid Proposal

Mr. Comitta reported that the bid package is ready, however, the proposal cannot be advertised for bid until the Prevailing Minimum Wage Rate is received from the Department of Labor & Industry (L&I). L&I has been taken to Court by the labor unions and issuance of a minimum wage rate is pending settlement of the appeal. Mr. Comitta requested Mr. Rossiter to talk to Mr. Adams and the county on how to proceed the Prevailing Minimum Wage dilemma.

Mr. Comitta commented that Mr. Lang proposed a more Chester County styled pavilion rather than the octagonal design by Cedar Forest Products costing $22,000 to $25,000. Mr. Lang suggested using the corn crib at Bridlewood Farm. Mr. Comitta reported that the structure was not in good shape and would be too expensive to transport. Mr. Comitta presented a redesign of the pavilion by Architect, Tim Cassidy. The Supervisors viewed the restyled pavilion with enthusiasm and stated that it

reflects the character of the Chester County. The Board stated if the cost estimate of the new pavilion design was competitive with Cedar Forest Products that the township should go ahead with Mr. Cassidy's design.

Bridlewood Farm Street Trees

Mr. Comitta reported that Hovnanian would prefer to plant the 45 proposes trees at 2-1/2" caliper versus 41 previously approved Green Mountain Sugar Maple trees between 3" to 3-1/2 caliper. Mr. Comitta commented that 4 trees will need to be moved to avoid the water line.

Thornbury Knoll

Mr. Comitta stated that Mr. Coburn recommended that he meet with Mr. Cummings and the TK residents regarding the berming and screening issue on June 24, 1997 at 5:00 P.M. Mr. Comitta questioned who was going to pay for his services. Mr. Rossiter responded that he would discuss this with Mr. Coburn and suggested that the applicant should put a dollar figure up front before proceeding further. Mr. Wilson stated that he would attend the meeting on June 24th.

Faucett Tract

Randy Schauer (Attorney), Robert Waters and Kevin Lahn (Waters & Associates) were present to discuss the Faucett Tract.

Mr. MacDonnell and Mr. Schmidt informed Waters & Associates (W&A) that they were not in favor of rezoning the tract to build another shopping center. They informed W&A that the trade off proposed by the P&R would be the absolute minimum proposal that would be considered. Mrs. Gowen stated that she did not object to a shopping center at the Faucett location but did not want to see the frontage change. Mr. Wilson agreed that a shopping center

at Route 202 and Dilworthtown Road makes sense, but shares Mr. MacDonnell and Mr. Schmidt's view to preserve the open space. Mr. Thomas Spackman asked W&A if they would have an interest in his property. Mr. Waters told the Board that they would contact the Dallett family regarding a proposed purchase. If the dollar figures justify the Dallett acquisition, W&A will present the trade off proposal to the Supervisors.

Resignation – Board of Supervisors
It was with great regret that the Supervisors accepted Mrs. Gowen's resignation, effective this date, from the Board. Mr. Wilson, Mr. MacDonnell and Mr. Schmidt thanked Mrs. Gowen for serving the township the past 7 years.

Mrs. Tindall informed Mrs. Gowen that the P&R was going the name the township tree to be planted in the park the "Paula Gowen" tree.

Public Comment
Mr. Spackman questioned the status of the silted-in stream off of S. New Street. Mr. Rossiter responded that the township is waiting for the report from YA.

Mr. Benjamin Johnson complained about the weeds at the intersection of Route 926 and S. Westtown Road. Mr. Johnson stated that the overgrowth blocks visibility when turning onto Route 926. Mr. Rossiter reported that both roads belong to PennDOT. Mr. Rossiter recommended removal of the fence at this location to insure that the grass is cut up to the macadam.

Appointment to the Board of Supervisors
Mr. Wilson stated that Mrs. Gowen had given the Board advanced notice of her resignation and they had the

opportunity to consider a candidate to fill the vacancy. A motion was made, seconded (WS/RM) and carried to nominate Patricia Dewey to fill the vacancy created by the resignation of Mrs. Gowen. The Board members welcomed Mrs. Dewey. Mrs. Dewey told the Board that she was looking forward to working with them.

Noise Ordinance

Mr. MacDonnell remarked that as Bridlewood intensifies the need for a noise ordinance becomes more apparent. Mr. MacDonnell stated that he has reviewed a noise ordinance from Radnor Township and recommended that Thornbury use their ordinance as a model. Mr. MacDonnell told the Board that he was going to make a few changes and then forward the sample ordinance to Mr. Adams to draft a similar one and present it for consideration. The Supervisors agreed with Mr. MacDonnell's recommendation.

Adjournment

There being no further business, a motion was made, seconded (WS/PG) and carried to adjourn the public portion of the meeting at 10:22 P.M. Mr. Wilson announced that the Board was going into executive session.

Respectfully submitted,

Constance Dulin
Township Secretary

EXHIBIT 11

CHESTER COUNTY THORNBURY TOWNSHIP

PARKS & RECREATION

MINUTES

June 4, 1997

Present: D. J. Tindall, Karin Calistri, Patricia Dewey, Helene MacLaughlin, George Wood

Absent: Pete Clark

MINUTES

It was moved and seconded that minutes of May 7 meeting be approved. Patricia Dewey abstained, she was not at the May 7 meeting.

OLD BUSINESS

Cliff Kenneck Resigned and an official letter of resignation is needed.

Park Rules

Thornbury Park Planning Details

County recommends a portion of the trail be moved because map indicated it was in wetlands.

$40,000.00 has been spent on engineering for the park to date.

End of field area should be left as is and mowed twice a year.

A good sized white oak has been located in New Jersey for the park.

Patricia suggested that some planned red maples be replaced with sugar maples for park. She also suggested that crab apples be removed. All members agreed.

Still trying to decide where to plant grove of trees.

Consultant suggested we change pavilion design. He feels an octagon shape is not representative of Chester county. He recommends a different design, perhaps using wood from a vacant barn. All agreed an original design would be preferable if cost was equivalent.

Patricia recommended volleyball court be moved nearer the pavilion area and away from the parking lot. All members agreed.
Committee decided to move volleyball court and to get a formal proposal for redesign of pavilion.

Proposed Development at 202 and Dilworthtown Road

A 150,000 square foot shopping center with a couple of restaurants is being proposed for the southeast corner of 202 and Dilworthtown Road.

The developers ask for suggestions from Park & Recreation committee to make the zoning change more favorable for the township.

The Parks & Rec committee voted that purchasing an additional 30 acres of the Dallett tract with the buildings would add to our desire to preserve open space. It was also

felt that the property could be leased for farming after being restored.

Developers asked the committee to review the possibility of having the Dallett tract property restored and to make a recommendation to the supervisors.

The committee recommendation is to have the developer purchase the Dallet tract with the house and outbuildings restored.

Activities

Christmas

George reiterated his suggestion from last meeting that we have tree decorations, choir, Santa and refreshments. It was agreed that the event be held on December 13 from 3:00-5:30. He suggested local schools be contacted to ask if the children would like to make decorations for tree. Also suggested kids have a train ride with Santa prior to refreshments and lighting tree. No gifts from Santa, have kids bring Christmas lists. We may have to pay some money for the train ride in lieu of charging kids and parents for the ride.

We have a budget of $495.00 for Christmas.

It was decided that we would mail Christmas cards with an invitation to the Christmas events for the township in early December would be mailed to township residents.

DJ will call about the Christmas tree to be planted (spruce).

We need good publicity for this event.

Fall Event

No discussion.

NEW BUSINESS

Recommended that part of the August 6 meeting be devoted to "Friends of the Park". We will put in the next newsletter an invitation for them to attend the meeting to discuss plans for park.

Jean Berlin has expressed an interest in joining the committee.

It was suggested that the vacancy on Parks & Rec be advertised on the Post Office bulletin board.

Next meeting scheduled for July 2.

ADJOURNMENT

Meeting was adjourned at 10:15.

Respectfully Submitted,

Peter Clark
Parks & Recreation

EXHIBIT 12

IN RE:	:	**BEFORE THE BOARD OF SUPERVISORS**
APPLICATION OF	:	
BIRMINGHAM DEVCO	:	**OF THORNBURY TOWNSHIP**
	:	
	:	**CHESTER COUNTY, PENNSYLVANIA**

DECISION

Birmingham Devco (hereinafter "Applicant" has filed an application for conditional use by which it seeks approval of the Board of Supervisors (hereinafter "Board") of Thornbury Township (hereinafter "Township") to develop a neighborhood shopping center on a property located at the northeast corner of Route 202 and Dilworthtown Road, generally referred to and known as the "Faucett tract."

Hearings on the application were held at the Thornbury Township Building on June 16 and June 18, 1998. Charles A. W. Wilson, Chairman, William A. Schmidt, J. Christopher Lang, Robert MacDonnell and Patricia Dewey heard the application for the Board. Robert F. Adams, Esquire, appeared as the Board's solicitor. The Applicant was represented by Randall C. Schauer, Esquire. Also appearing of record were Joseph E. Brion, Esquire, representing Birmingham Township and Fronefield Crawford, Jr., Esquire, representing Penn Oaks Estates, Inc. No other parties appeared of record.

After receiving the evidence presented by the Applicant, and having reviewed the same, the Board makes the following:

Findings of Fact

1. Notice of the hearing was duly published in the Daily Local News and posted at the Township Building, as required by law.

2. The hearing was duly convened, and the Applicant presented evidence in support of the application.

3. Birmingham Devco is a general partnership and the equitable owner of the Faucett tract which will serve as the developer of the property which is the subject of the application. The leasing and management entity for the project is R.J. Waters & Associates, Inc. Kevin Lahn, Vice President of R.J. Waters and a general partner of the Applicant, testified on behalf of the Applicant.

4. The property which is intended to be developed by the Applicant as a neighborhood shopping center (hereinafter "Property") consists of a total of 25.7 acres, located in both Thornbury and Birmingham Townships.

5. The portion of the Property which is in Thornbury Township contains approximately 19.9 acres. The balance of the 25.7-acre parcel is located in Birmingham Township and has frontage along the northerly property line of the project on Route 202.

6. The entire Property to be developed appears in a sketch plan entitled "Shoppes at Dilworthtown Crossing" marked Exhibit A-1 at the hearing.

7. The Applicant proposes to develop a high quality up-scale neighborhood shopping center consisting of approximately 122,000 square feet in total area.

8. The Applicant proposes to construct 4 pad sites in Birmingham Township along Route 202, containing 17,950

square feet, and larger retail stores to the rear in Thornbury Township containing 104,060 feet of floor area.

9. The pad sites in Birmingham Township are proposed to be one for general retail use, one as a drive-in bank and two restaurants (a drive-thru type and a sit-down type of restaurant.

10. The Thornbury portion will contain three anchor uses, including a food store of approximately 50,000 square feet, a drug store and possibly a book store. In addition, the Applicant proposes several high quality retail type stores, such as hairstylist, camera store, dry cleaner, jewelry store and similar uses.

11. The portion of the Property in the Township is currently zoned A Agricultural and Residential District. The portion of the Property in Birmingham Township is zoned C-1 Highway Commercial.

12. The Applicant has, in addition to filing a conditional use application, filed an application for zoning amendment to the B Business District regulations of the Thornbury Township Zoning Ordinance (hereinafter "Zoning Ordinance") and for an amendment to the Zoning Map of the Township by which the Property will be rezoned to B Business District (Exhibit B-2). The proposed zoning amendment was attached as Exhibit B-2.

13. The Applicant also filed an amendment to its application for amendment to the Zoning Ordinance and Map by which a Co-Applicant, Penn Oaks Estates, Inc., joined in the application, seeking the same zoning modifications for the Co-Applicant's 80,000-square foot property abutting the Applicant's Property to the east. That amendment is made part of this record as Exhibit B-3.

14. The proposed Zoning Ordinance and Map amendments were also advertised for hearing concurrently with the hearing on the conditional use application and the Zoning Ordinance amendment advertised for consideration took the form as set forth in Exhibit B-4.

15. At the hearing of June 16, 1998, the Board voted unanimously to strike the petition for rezoning as it relates to the property of the Co-Applicant, Penn Oaks, Estates, Inc. and limited its consideration of the zoning changes to the Applicant's 19.9-acre Property.

16. The proposed zoning amendments, in addition to the change of zoning classification from A Agricultural and Residential to B Business District include the following: changes to the permitted uses under § 155-35 by the introduction of shopping center development over 30,000 square feet by conditional use; the deletion of the special regulations relating to commercial development under § 155-37; the modification of the parking regulations contained in § 155-39.E. by the addition of the requirement of one parking space for every 200 square feet of sales area associated with the shopping center; and the modification of the sign regulations of § 155-51.B. by the introduction of regulations for signs permitted in conjunction with shopping center development, including regulations for ground (pylon) signs and under-canopy signs.

17. The Property is bounded on the north by three tracts: one in Thornbury Township, zoned B Business; and two in Birmingham Township, zoned with commercial classification. To the east, the Property adjoins Penn Oaks Country Club which is zoned A Agricultural Residential and is currently used as a golf course. To the south, the Property is bounded by Dilworthtown Road and is across

the street from three parcels containing three different zoning categories. To the west the Property is bounded in Birmingham Township by Route 202.

18. The highest elevation of the Property is at the northwest corner along Route 202, and the lowest point is in the middle of the east Property line where the Property adjoins the Penn Oaks Country Club, which point is 60 feet below the highest elevation.

19. The Property currently contains a farm complex which is located largely with in Birmingham Township and consists of three houses, two barns, a garden area, two garages, a shed and a pump house, all of which features will be removed in connection with the proposed development.

20. The site plan marked Exhibit A-1 demonstrates the points of vehicular access to the Property. The Property will be accessed through Birmingham Township, with a right-turn in/right-turn out drive 500 feet north of the intersection of Route 202 and Dilworthtown Road. In addition, there will be two entrances in the Township located on Dilworthtown Road, one 300 feet from Route 202, and the second 300 feet further to the east of Route 202.

21. Signs are proposed in accordance with the renderings appearing in Exhibit A-2. There will be one pylon sign in Thornbury Township along Dilworthtown Road and one the larger pylon sign along Route 202 in Birmingham Township. In addition, the Applicant proposes building signs and under-canopy signs as illustrated in exhibits presented to the Board.

22. The Applicant proposes 773 parking spaces at an overall ratio of 6.35 per 1,000 square feet of retail area. In Thornbury Township there will be 551 parking spaces, and in Birmingham Township there will be 221 parking spaces, which will provide ratios of 5.3 and 12.2 spaces per 1,000 feet of retail area respectively. In Thornbury Township the 5.3 per 1,000-square foot ratio is the same as the Longwood Village project which was constructed in East Marlborough Township by R.J. Waters & Associates, Inc.

23. The Applicant and Penn Oaks Estates, Inc. have reached an agreement as to the improvements to be constructed along the east property line of the Property which will include a berm between the golf course and the subject Property, containing trees, a fence and a retaining wall. They propose a 30-foot undisturbed strip along the easterly property line bounded on the east by the Penn Oaks Country Club.

24. The Township Planning Commission has recommended that there be a 30-foot right-of-way at the rear (east) of the Property to connect this site and Dilworthtown Road with the properties to the north. The owners of the Penn Oaks property have expressed their objection to that concept, feeling that there will be a negative impact on the Property by the construction of a roadway along the easterly boundary of the Property.

25. As an alternative, the Applicant has proposed a 30-foot easement, as shown in Exhibit A-7, a plan by Chester Valley Engineers, entitled "Alternate Access Easement Plan" which will connect the proposed parking area of the Property with the Stoltzfus property to the north at a location approximately 200 feet from the rear line of the Stoltzfus property.

26. The Chester County Planning Commission has offered comment on the proposed plan and zoning change in a letter dated August 4, 1998 which was supplied to the Township. This letter, as agreed by counsel for the parties, will be made part of the record and has been marked Exhibit B-9.

27. The Applicant has presented a proposed landscaping plan (Exhibit A-10) which is a "typical" plan without particular plant types designated.

28. R. Douglas Stewart, the planning consultant for the Applicant, testified to the justification for the proposed zoning change of the Property to the B Business District classification which, as set forth in Exhibit A-2, he justifies based upon the location of the Property by two major roads and the ease of access to the Property, as well as the numerous commercial and highway-orientated zoning designations which surround the Property in both Birmingham and Thornbury Townships.

29. Mr. Stewart points out that the Property is already influenced by the heavy traffic on the highway system and the high intensity uses which are nearby and offered the opinion that, from a planning viewpoint, a less intense use than the neighborhood shopping center would be inappropriate at this location.

30. The Applicant has also performed an impact analysis for the Property, which is included in Exhibit A-2, in which in concludes that the Property can be adequately serviced by Philadelphia Suburban Water Company, West Chester Fire Department and one of three sewage treatment alternatives presented in the study by R.E. Coleman & Associates.

31. In terms of impact of this project on the historic resources, the Applicant testified that the existing structures on the Property cannot be saved, but that the Faucett tract ranks low in terms of its candidacy for an open space site in Thornbury Township. The impact analysis also concludes that the Dallett tract, located in the eastern part of the Township, has a high value and is a very viable candidate for acquisition as open space.

32. The Applicant has offered, in lieu of saving the existing structures on the Property, and in the interest of assisting the Township in its open space acquisition efforts, to make a contribution to the Township should its zoning and land development proposals be approved, in order to assist it in the acquisition of additional Township open space.

33. The Applicant has also considered the traffic impacts of this proposal and has presented a traffic impact study by Traffic Planning & Design, Inc. which is part of the Exhibit A-2. The surrounding roadway improvements to Route 202, Dilworthtown Road and Brinton's Bridge Road are depicted on a plan providing by Traffic Planning & Design marked Exhibit A-13.

34. The traffic study presented by the Applicant concludes that with the development of the site as proposed, including the recommended roadway improvements, the Route 202/Dilworthtown Road/Brinton's Bridge Road intersection will be significantly improved for the critical weekday p.m. peak hour relative to base conditions without the proposed development. The roadway improvements on Dilworthtown Road have been designed to maximize the stacking capacities for the various left-turn lanes shown on Exhibit A-13.

35. The Applicant presented testimony and a preliminary stormwater management analysis as part of Exhibit A-3, which indicates that the proposed stormwater conveyance system will consist of grass-lined swales, inlets and metal storm pipes and that stormwater runoff generated from the impervious surfaces will be collected and conveyed into one of possibly three stormwater detention facilities. The narrative indicates that the proposed storm sewer conveyance system and management facilities will be designed and detailed during the preparation of the land development plans for the project in accordance with the subdivision and land development ordinance of the Township and of Birmingham Township.

36. Following the hearing, counsel for Penn Oaks Estates, Inc. presented to the Board a stipulation dated July 10, 1998 between the Applicant and Penn Oaks Estates (hereinafter "Stipulation") by which they reached an accommodation concerning measures to be taken by the Applicant to alleviate potential off-site adverse impact of the proposed rezoning and development. That Stipulation has been made part of this record as Exhibit B-10.

Discussion

This application is unusual in the respect that it is an application for conditional use approval of a use which is not authorized for the land upon which it is proposed to be constructed. As indicated in the foregoing Findings of Fact, the Applicant has submitted this application and concurrently has submitted an application for a Zoning Ordinance and Map amendment which the Board advertised and has considered simultaneously with this application. Essentially, therefore, the Board is considering this

conditional use application, having created the fiction of the Property being presently zoned to permit the proposed shopping center use. Of course, any action that we take in the approval of the conditional use application will be contingent upon the Board having duly adopted a Zoning Ordinance and Map amendment which permits the shopping center development over 30,000 square feet in area by conditional use, as set forth in the proposed ordinance (Exhibit B-4). As we indicated at the outset of the conditional use hearing, we have stricken the proposed amendment to the extent it includes the 80,000-square foot neighboring property of Penn Oaks Estates, Inc., as set forth in the amendment to application submitted by the Applicant and Penn Oaks Estates, Inc. (Exhibit B-3). We do not in any respect consider the adjacent property of Penn Oaks Estates, Inc. to be an appropriate candidate for rezoning in conjunction with our review of the application of Birmingham Devco, or otherwise.

Since favorable action by this Board on the conditional use application which is before it is dependent upon our rezoning of the Property, we want first to address some of the issues which bear upon that decision. We agree with the Applicant's assessment of the zoning change justification, as set forth in Exhibit A-2, in that from a land planning viewpoint the Property appears to be ideally located for a commercial use designation. As indicated in the testimony, there are several intensive highway oriented uses in the immediate vicinity of this Property, both in Thornbury and Birmingham Townships. The Property has frontage on Route 202, and the potential exists for appropriate highway modifications to make this site easily accessible to a large population. There is an appropriate buffer in the form of a golf course between the Property

and the residential development of Thornbury Township to the east. Thornbury Township has very limited commercial area, the only other locations being the Stoltzfus property to the north and the properties at the southwest and southeast corners of the intersection of Routes 926 and 202. We believe that there is a need for additional commercial development in Thornbury Township and feel strongly that any expansion of the B Business District at the intersection of Routes 202 and 926 to accommodate a center of this size is inappropriate, given the already overburdened road system at that intersection and the commercial development immediately to the north of Route 926 in Westtown Township.

In reaching this conclusion, we are cognizant of the comments of the Chester County Planning Commission as set forth in the review letter (Exhibit B-9) from William H. Fulton, Secretary of the Planning Commission. The Planning Commission has recommended that the Zoning Ordinance and Map changes not be approved, because they are inconsistent with the land use policies adopted in the Township comprehensive plan and because of the significant effects that the proposed use would have on the local road network. The Commission's principal objection appears to be an inconsistency between this proposal and the comprehensive plan which discusses the "two poles" of the Township (Cheyney University and the area west of Route 202) as development district with the center of the Township being maintained as relatively undeveloped and open space area. The Planning Commission does find that the proposed use is consistent with the recommended use for the Suburban Landscape, as set forth in the Chester County Comprehensive Plan, *Landscapes*, which designates the area of the proposed Zoning Map change as a

"Suburban Landscape." The letter indicates that the Suburban Landscape designation includes areas where infrastructure and public services have been or should be, extended to accommodate residential development and *shopping* and employment centers (emphasis supplied). It is peculiar that the County would take a position which is inconsistent with its own carefully crafted Comprehensive Plan. Our view of the Planning Commission's objection is that it is preferable to provide commercial development along the Route 202 Corridor than to introduce it to an area near Cheyney University. The subject Property which is now under consideration for the zoning change is as close to the western part of the Township as one can find, with the exception of the Exxon Station and the Robinson Tract PRD on the west side of Route 202 at the intersection with Route 926. In this respect, we do not believe that this proposal is at odds with the Township comprehensive plan.

The other basis for the negative recommendation of the County Planning Commission is the effect that this proposed use would have on the local road network. In our judgment, the location of commercial development at this site has a much greater potential for preserving the existing road network of Thornbury Township than if it were located in another area of the Township. Route 202 is slated for improvements, and the developer, as indicates at the hearing, proposes major improvements to the intersection and to Dilworthtown Road. We believe that adequate accommodation can be made to deal with the traffic generated from this site and that there is no better place in the Township for commercial development than on properties adjoining Route 202.

Having indicated our general willingness to consider the requested rezoning, we will now address how this application meets the standards of the proposed ordinance and the other standards of our Zoning Ordinance relating to conditional use applications. § 155-82.1. of the Zoning Ordinance deals with conditional uses. We find that, in accordance with the statement of intent set forth in § 155-82.1.A. of the Zoning Ordinance, the proposed use for the Property constitutes a major use, having the potential for substantial impact upon the community, and is one appropriate for the conditional use process. The application submitted by the Applicant is comprehensive, and we find that it is in substantial compliance with the requirements for the submission and content of conditional use applications set forth in § 155-82.1.B. Under this section, it is the burden of the Applicant to demonstrate compliance with the standards for conditional use contained in § 155-82.1. and to indicate the means by which the potential impacts of the proposed shopping center development will be mitigated. We find that the Applicant has satisfactorily carried that burden.

The application has been reviewed in accordance with the review procedures set forth in §155-82.1.C. In particular, the application was reviewed by the Zoning Officer, the Supervisors held a hearing within 60 days, and we have received comment from the Planning Commission for consideration at the hearing. A stenographic record of the hearing proceedings was made. The Board has received comments from the Township Planning Commission which recommends the rezoning of the Property and the approval of the application, subject to conditions which we have incorporated substantially in the order which follows. §155-82.1.C.(7) of the Zoning Ordinance allows the Board,

at its sole discretion, to attach such conditions to its approval as it deems necessary to further the purposes of the Zoning Ordinance. This application has given rise to the need of the Board to impose multiple conditions of approval which we believe are warranted to mitigate the potential off-site impacts of this development.

The project under consideration is somewhat unique because it lies within two townships and requires the coordination of both this Township and Birmingham Township. Accordingly, our approval will be conditioned upon our being assured that the portion of the development project in Birmingham Township will be developed in a manner which is acceptable to the Township and which is compatible with the use and development proposals which have been presented to us. While the exhibits presented to the Board show what is intended for Birmingham Township, we are not assured that is what will be ultimately approved by Birmingham Township.

The Board will require that the Applicant provide a means of connecting the Property to the Stoltzfus property to the north by means of a service road of such width and at such location as is determined by the Board to provide the ultimate connection of the Property to Country Club Road. The Applicant has shown proposed traffic improvements which appear preliminarily to address satisfactorily the need to accommodate the traffic impacts to be created by the project, but the Board will condition its approval on the Applicant's agreement to construct such road improvements as are necessary to mitigate the impact of the development in the Township's opinion, based upon recommendations of its traffic consultant.

While stormwater management and sewage treatment proposals have been preliminarily presented in the conditional use hearing process, the feasibility of such proposals will be ultimately determined by the Township Engineer, and our approval will be conditioned accordingly.

The proposed project, while abutting a golf course project to the east, should, nevertheless, be screened appropriately. We will impose requirements necessary to mitigate that impact. The application included a rudimentary landscaping plan, but our conditions will require a more thorough proposal which will be subject to the approval of the Board and its landscape consultant.

We are cognizant that the rezoning of the Property and the approval of the proposed development project will have a substantial impact upon the existing open space. Almost 20 acres of the total Property being developed is in Thornbury Township, and it wi'l be hereafter lost to the Township as potentially available for open space purposes. The Board is extremely pleased with the Applicant's willingness to recognize the impact of this project upon the Township open space and welcomes its acknowledgment, as set forth in Kevin Lahn's testimony (N.T. 16) and in the impact analysis contained in Exhibit A-2, that another property in the Township, which is currently owned by the Dallett family, has a high value for preservation as open space, making it a very viable candidate for acquisition by the Township. The Applicant has offered, in lieu of saving the existing structures and open space on the Faucett property, to assist the Township financially in obtaining the balance of the Dallett property should it receive the approvals which it now seeks. The Board has invested a considerable amount of time, effort and public funds in the acquisition of a portion of the Dallett tract, and will

welcome the assistance of the Applicant in completing its open space acquisition program on the Dallett tract. We believe that this acquisition will more than off-set the loss of open space and historical amenities on the Property and will provide a significant piece of open space which can be enjoyed by Township residents for generations to come.

The introduction of a commercial project of this magnitude and this impact in Thornbury Township is unprecedented, but we feel that with appropriate safeguards and conditions, it will be an asset to the Township and its citizens. We are heartened by the involvement of R.J. Waters & Associates, Inc. in the development of this project. The Board is familiar with the work of this company, most notably the Longwood Village Center in East Marlborough Township, Chester County, we are impressed with the knowledge and experience that R.J. Waters brings to the development of this up-scale neighborhood shopping center. We have a high level of confidence that the project will be successful.

In addition to the other provisions of §155-82.1., we have reviewed this application under the general standards for conditional use approval contained in §155-82.1.D., and we find that, appropriately conditioned, this project is in compliance with the standards therein set forth, and we will, accordingly, approve the application.

Conclusions of Law

1. The hearing was duly advertised, all required notices were given, and the hearing was duly convened.

2. The Board of Supervisors of Thornbury Township has jurisdiction of this application.

3. The Applicant has demonstrated that the proposed shopping center development meets the specific standards for the B Business District, as amended in the manner proposed by the Applicant.

4. The Applicant has demonstrated compliance with all of the relevant standards and requirements for the review of conditional use applications, as set forth in § 155-82.1.

5. The approval of this project will be conditioned as a matter of law upon the Board's final approval of Zoning Ordinance and Map amendments which will zone the Property in the B Business District classification, as amended appropriately to accommodate a shopping center development aggregating over 30,000 square feet or more of gross floor area, with appropriate other associated modifications of the existing B Business District regulations.

The Board, therefore, enters the following order:

ORDER

AND NOW, this 3rd day of November, 1998, upon consideration of the application of Birmingham Devco for conditional use approval to permit the development of the Property as a neighborhood shopping center as a conditional use authorized by the provisions of §155-35 of the Zoning Ordinance, as the same is proposed to be amended, and having found that the Applicant has demonstrated compliance with the standards of the Zoning Ordinance relating to the use as proposed and has satisfied the requirements of §155-82.1. of the Zoning Ordinance relating to conditional use applications, IT IS HEREBY

ORDERED that the conditional use application is granted to permit the proposed shopping center project, subject to the following express conditions:

General

1. The proposed use and construction of the shopping center improvements on the Property by the Applicant shall be substantially in accordance with the testimony and exhibits presented to the Board by the Applicant, except to the extent that the Applicant's testimony and exhibits are modified by the remaining conditions of this order and/or the subsequent determination of the Board in the land development review process of this application.

2. This approval shall not be construed to be a waiver of any other provision of the Thornbury Township Zoning Ordinance, Subdivision and Land Development Ordinance, Comprehensive Plan or any other Township or other governmental ordinance, law or requirement, it being the intention of the Board that the proposed use of the Property and the construction thereon shall comply with all applicable ordinances, laws and requirements, except to the extent modified by this order.

3. This approval shall not be effective until and unless the Board of Supervisors of Thornbury Township duly enacts the Zoning Ordinance and Map amendments by which the neighborhood shopping center use shall be permitted at the Property.

4. The Applicant's entitlement to develop the Property pursuant to this approval shall be conditioned upon the Board's satisfaction that the portion of the Property located in Birmingham Township is being developed

pursuant to complementary plans which have been duly approved by the Birmingham Township Board of Supervisors, and in a manner which is substantially consistent with the Applicant's plans and the testimony and exhibits presented to the Board and acceptable in all respects to the Board.

5. If the development of the shopping center is to be carried out in progressive stages, each stage shall be so planned and developed that all the requirements of this conditional use approval, the final land development plan approval and all other applicable Township ordinances shall be met at the completion of each stage.

6. The Township shall not be bound, and this order shall not be changed by any agreements between the parties to the hearing, including the agreement contained in the Stipulation marked as Exhibit B-10, except when and to the extent the Board may hereafter approve such agreements.

7. Alcoholic beverages shall not be made available for consumption on the site, except in conjunction with a full-service family-type restaurant.

Stormwater Management

8. All surface and subsurface water systems shall be constructed as to control water amounts in a 100-year storm and shall be subject to regularly scheduled monitoring to ensure that safe and clean water enters the ground. All stormwater management measures shall comply with the stormwater management provisions in §115-48 and 49 of the Thornbury Township Subdivision and Land Development Ordinance.

9. The stormwater management ponds on the Property shall be designed in a manner that provides for a naturalized appearance in a free-flowing shape and planted with native plantings suitable for wetlands. The final location, size shape and plantings shall be subject to the approval of the Township Engineer and landscaping consultant.

10. All stormwater shall be contained on the tract and directed to a natural drainage channel or storm sewer system and controlled at, on and beyond the point of discharge in a manner approved by the Township Engineer. The water quality of all runoff shall be assured by the installation of appropriated facilities approved by the Township Engineer to help remove heavy particles, oil/grease and other contaminants and floating substances which pollute the runoff. The Applicant shall annually test the stormwater runoff from the Property for hazardous waste/pollutants. The method of the testing shall be approved by the Township Engineer, who shall be supplied a copy of the test results. The Applicant shall implement all reasonable corrective measures recommended by the Township Engineer if hazardous waste/pollutants from non-natural sources originating on the Property of unacceptable levels are found.

Right-of-Way

11. A 30-foot wide right-of-way shall be designated on the land development plans and offered for dedication to the Township, allowing connection between the adjoining property to the north (currently the Stoltzfus property) and Dilworthtown Road. The location of the right-of-way shall be determined by the Board of Supervisors at the

time of final land development approval and shall be located in accordance with and to accomplish the purposes of the Official Township Map.

Screening

12. All land development of the Property shall be fully screened from view along its easterly border and all abutting residential uses. The screen shall be a completely planted visual barrier landscape screen composed of native evergreen and deciduous trees and shrubs. Tree specimens shall be no less than 8 feet in height, shrubs no less than 3 feet in height (spaced at intervals of not more than 5 feet). The screening shall be planted in offset rows to produce an effective and attractive barrier. All plantings and the layout of the screen shall be approved by the Township planning/landscaping consultant. The Applicant shall maintain the screen plantings and replace any plant material which does not live.

13. All heating, ventilation and air conditioning systems shall be totally screened to hide them from view and to mitigate noise by the installation of parapet walls on top of the building and/or such other measures as may be approved by the Board.

Landscaping

14. The development shall be fully landscaped with the following specific provisions:

a. All pedestrian and vehicular traffic corners shall have clear sight distance.

b. The parking area shall provide for islands with trees and other appropriate plantings. The islands

shall occur at the rate of 1 island per 12 continuous parking spaces and shall be of the design and location as determined by the Board during final plan review.

c. The pedestrian sidewalk along the storefronts shall provide for landscaping in order to mitigate the mass of the buildings' size and provide for more pervious surface without obstructing safety considerations.

d. It is not intended that this approval be construed to be the Board's agreement to the design elements of the site improvements, which need refinement and improvement. The design shall he improved during the land development review phase. For example, but not by way of limitation, the Applicant shall present to the Board at that time a revised facade and sidewalk plan which shall incorporate an outdoor public seating and gathering area which shall include landscape planters, tables, umbrellas and special lighting fixture treatments. The Applicant shall also submit a proposal which incorporates additional roof breaks and recesses in the facade to break up the long length of the center.

e. All landscape design and materials shall be subject to the approval of the Township Engineer and the Township planning/landscaping consultant. The landowner shall maintain all plantings and replace any plant material which does not live.

Parking and Vehicular Circulation

15. The driveway in front (immediately to the west) of the buildings shall be a minimum width of 30 feet in order to provide for an emergency fire lane. The fire lane shall be designated by a 12-foot wide striped area with

appropriate signage. All fire and emergency access shall be subject to the approval of the Township Engineer and the Township fire marshal.

16. All interior circulation shall be designed to minimize the interaction of customer vehicles and delivery trucks. All tractor trailer deliveries shall be made to the rear of each retail use.

17. The parking lot shall be configured to provide a maximum number of parking spaces directly in front of the supermarket and provide for appropriate shopping cart drop-offs, substantially in accordance with the plans and exhibits submitted at the hearings on the application.

18. The number of total parking spaces, the layout, material and grading of all parking, vehicular access and interior circulation shall be substantially in accordance with the plans and exhibits submitted at the hearings and shall be subject to the approval of the Board.

Outdoor Storage

19. All dumpsters shall be located to the rear of the buildings, be screened and enclosed by gated, 6-foot high finished concrete block walls and landscaped appropriately.

20. No other temporary or permanent outdoor storage facilities shall be permitted on the site after construction is completed.

Lighting

21. All lighting shall be non-glare, not directed off the site. Lighting layout, design type and height shall be subject to the approval of the Board.

Signs

22. All under-canopy signs located on the exterior of the building shall be placed perpendicular to the buildings' facades and free-standing pylon signs shall meet the requirements of the Township sign ordinance.

Open Space and Historic Preservation

23. In lieu of providing open space on the Property and preserving the existing structures on the Faucett tract, the Applicant shall contribute the sum of $600,000 to Thornbury Township for the express purpose of purchasing additional open space at the Dallett property. This contribution shall be paid one-third (⅓) at the time of building permit issuance and the remaining two-thirds (⅔) at the time of initial occupancy of the center. In the event the Township does not use this fund for the designated purpose, or such other historic/open space purpose within the Township as the Township may select, within ten (10) years of the date of final land development plan approval, the Township shall refund the unused portion thereof to the Applicant.

24. Prior to the removal from the Property, the historic structures located in Birmingham Township shall be documented by the Applicant through archival architectural photographs and plans recording the basic dimensions of the structures, which documentation shall be filed with the appropriate Township and County historical bodies.

THORNBURY TOWNSHIP
BOARD OF SUPERVISORS

/s/ Charles Wilson
Charles A. Wilson, Chairman

/s/ J. Christopher Lang
J. Christopher Lang

/s/ William A. Schmidt, Jr.
William A. Schmidt, Jr.

/s/ Patricia A. Dewey
Patricia A. Dewey

Robert MacDonnell

EXHIBIT 13

IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF PENNSYLVANIA

* * *

IN THE MATTER OF: THORNBURY NOBLE, LTD.,	)	
Plaintiff,	)	
-v-	)	No. 99-CV-6460
THORNBURY TOWNSHIP, Chester County, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, and CHRISTOPHER LANG, ANDREW SCHMIDT, PATRICIA DEWEY, CHARLES WILSON, and ROBERT MacDONNELL,	)	
Defendants.	)	

* * *

Friday, October 26, 2001
West Chester, Pennsylvania

* * *

Continued oral deposition of KEVIN A. LAHN, taken in the law offices of MacElree, Harvey, 17 West Miner Street, West Chester, Pennsylvania, on the above date, commencing at 3:05 p.m., before Arlene M. LaRosa, Registered Professional Reporter.

* * *

[32] you mean a hearing?

A. Conditional use hearing or regular board of supervisors meeting. I remember it was at a public meeting. That's all I recall.

Q. Do you recall who on the board was speaking about the timing of the contribution?

A. No, I don't.

Q. Was it important for R.J. Waters to have the timing of the contribution one-third at the building permit issuance and two-thirds at the time of the initial occupancy?

A. Yeah. It is to our benefit because we are not paying interest on that money until the shopping center opens and the rent would start coming in. But we have negotiated things like this before or agreed with other townships on payments of contributions in other townships for other projects.

Q. Was it your understanding that this 600,000 contribution was contingent upon getting your land development approvals?

MR. BELLWOAR: Objection.

A. We would never agree to any conditions in a conditional use approval unless we had approval. I mean, you can't finance an impact fee [33] without having land development approval. You can't put in road improvements without have [sic] land development approval.

Q. Did you consider this to be an impact fee, this 600,000?

A. It is the normal way of business in Pennsylvania as far as, you know, based on my experience working here for 15 years.

Q. Are you aware of whether Thornbury Township had any impact fee ordinances in place at the time in 1998?

A. I was not aware.

Q. Has Waters made contributions in other townships for open space when you were trying to get a piece of property rezoned?

MR. RILEY: Objection.

A. Either open space or monetary contribution, yes. For the most part, our other projects have already been zoned, but I am involved with a project now on a rezoning and we have offered to make a contribution for traffic improvements.

Q. Where is that at?

A. It is in Lancaster County.

Q. The 23 continues: In the event the

* * *

EXHIBIT 14

FACSIMILE COVER PAGE

To:	Mahlon Rossiter	**From:**	Chuck Wilson
Sent:	3/24/98 at 8:59:22 AM	**Pages:**	1 (including cover)
Subject:	Info Update		

Original to Bob Adams:

Bob,

I had a meeting on Friday with Kevin Lahn of R.J. Waters and two laccabuccis (sp?). The purpose of the meeting was to address the impact of the proposed shopping center at route 202 and Dilworthtown Road on the Golf Club

The two parties seem to be trying to work together as well as get more out of the opportunity. They showed a plan involving an internal road coming from Penn Oaks to the shopping center (Birmbury, I didn't get a vote) which would also have an additional forty townhouses along the road north of the shopping center and between the golf course and the Birmingham commercial strip along route 202. The idea would result in the internal road, which seems good, and the additional townshouses, which is okay as it does further enhance the golf course. There are of course a lot of issues: 1) what zoning needs to be changed to allow for each aspect of the project (we may have rezoned the property behind Wenner Ford to commercial at the same time we did the Stolfus property); 2) can the lot requirements be met by the townhouses [sic] and the shopping center, and; 3) can the sewerage and other infrastructure requirements be met, including open space.

I suggested the principals have their respective attorneys, Randy Schauer and Froen Crawford contact you to determine the zoning abed [sic] and sub-division requirements.

One key issue is not having this slow down the Waters' project since we want them to be able to lay the first brick to assure their supermarket will be the next one built to enable our funding for the next phase of the Dallett tract acquisition effort.

I will not votew [sic] for any additional commercial property at routes 926 and 202 so the Acchiavatti's are not likely to get Genuardi as a lead tenant. I still must communicate my conclusion to Acchiavatti. I have informed Skip Genuardi that if they wanted to build a smaller market which would fit on the land they might be able to get support, if it wasn't something allowed by right. He said he would look into it, but I haven't yet heard from him.

There is also a potential buyer pursuing the Commons at Thornbury parcel. This buyer is interested in essentially building the presently approved plan. His price seems to be getting closer to something which should be acceptable to the Acchiavattis. I fear they are too unreasonable.

Please call if you have any questions.

Chuck

cc: Mahlon Rossiter

EXHIBIT 17

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA

THORNBURY NOBLE, LTD. Plaintiff v. THORNBURY TOWNSHIP, Chester County, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, and the Members of the Board of Supervision in their official capacity: PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A. W. WILSON, and ROBERT A. MacDONNELL, Defendants	* * * * * * * * * * * * * * * * * * * *	Civil Action No. 99-CV-6460 JURY TRIAL DEMANDED

* * * * * * * * *

DEPOSITION OF RICHARD DUGAN

The Deposition of Richard Dugan, taken in the above-captioned case on Tuesday, August 28, 2001, commencing at 11:00 a.m., in the Offices of Giant Foods, 6300 Sheriff Road, Landover, Maryland, 20785, and was reported by Dawn M. Hyde, a Notary Public.

* * *

[13] this deal?

A. Absolutely.

Q. Did you have an understanding about what the Acciavattis and Thornbury Noble intended to do at the site of the Commons at Thornbury?

A. We had worked out a site plan between us. What we needed for them to do to be able for us to build a store.

Q. And what was that, that Genuardi's needed to have done for that site?

A. There were access issues. We needed certain access points. We needed a certain parking ratio. And not only the ratio, but where the parking was located on the site. You can get a parking ratio by putting parking spaces behind a store, which doesn't work. And the placement of the store and how that related to the access points.

Q. Did you understand that Thornbury Noble was intending to request that there be some rezoning of that property?

A. Yes. A portion of the property. My understanding was the front portion was zoned. The rear portion, which we needed to be able to put the store on, was not zoned.

Q. So is it fair to say that Thornbury Noble [14] and Genuardi's discussed the moving back of the store onto that portion that was going to be rezoned?

A. Yes. That was a requirement of Genuardi's, that we could not fit on the zoned portion alone. We needed the rear portion to be rezoned to actually place the store there.

Q. When you say it was a requirement that that property be rezoned, was that to address the issues that you were talking about in terms of the access in and out of the site?

A. It was not only access, it was parking as well. And I believe it's covered in the deal letter or the Letter of Intent under Site Plan, item number XV.

Q. And I'll just paraphrase, but that's that the lessee and lessor will attempt a zoning and plan change to locate the building at the Berdich property line within twelve months.

From that, it says that Genuardi's agreed to share the legal and engineering expenses for that project.

A. I believe that's what we were referring to at the time.

Q. Following the signing of the Letter of

* * *

[32] No. 7 was marked for identification.)

MR. STYER: Andy, it's a letter dated July 22, 1998 from Rich Dugan to Alan Baumholtz.

MR. BELLWOAR: Thank you.

Q. Could you tell me what this letter is?

A. It's a letter withdrawing our interest to proceed further with the Thornbury Noble organization to pursue building a store at this site.

Q. Why did Genuardi's withdraw its Letter of Interest to pursue the site at Thornbury Noble?

A. Two reasons. After the meeting of July 7, we had – or I had conversations, as well as others, with the officials of Thornbury and were told that the chance of this getting rezoned or the property we needed rezoned were

pretty slim. And at the same time the opportunity to build a store down at the Waters piece, which was referenced earlier, was presented to us. And the decision was made since that didn't look like the Acciavattis were going to get the rezoning they needed, we would move to the second location.

Q. Which was Genuardi's first choice here as far as locations were concerned?

A. Genuardi's first choice always was the 926 [33] and 202. Even after negotiating with Waters, they realized that this was a B location. The A location was the Thornbury Noble piece.

Q. And why was that?

A. Just because it was on two major intersections. Whereas Dilworthtown Road was not a major road. 202 was, but the access into the project at the Waters piece wasn't – it just wasn't a better location from a real estate point of view.

When you have two major roads coming together and you can be at that intersection that is the ground zero piece.

Q. Now, you referenced that you had some discussions with people from the Township.

A. Yes.

Q. Who initiated those discussions?

A. I don't recall if I called or one of the Township people called. I just don't recall if it was me or them.

Q. Let me show you what we'll mark as Dugan No. 8.

(Whereupon, Dugan Deposition Exhibit No. 8 was marked for identification.)

MR. STYER: Andy, that's the memo from Mahlon Rossiter to the Board of Supervisors, dated

* * *

[35] conversations prior to the letter of July 22 to Thornbury Noble discussing the possibility of the rezoning. But it would be out of character for me to call anybody to say this is – to announce Genuardi's intentions of what they're going to do. If the question was asked, you know, we may discuss it, but that's just out of character.

Q. Do you recall whether Mr. MacDonnell told you that Thornbury Noble was not going to get the rezoning?

A. I recall having conversations with Mr. MacDonnell, and it's my belief that it was Mr. Macdonnell that – because he was the person that I talked to the most, that he was the one that advised me that it didn't look favorable for the Thornbury Noble to be granted that zoning. And that obviously triggered in our decision not to keep pursuing it.

Q. Did Mr. MacDonnell tell you about the Waters tract?

MR. GONZALES: Objection.

You can answer.

A. No. I don't think he told me about it. We were aware of it long before my discussions with him. You know, we had the opportunity earlier than

* * *

[84] of 1998, correct?

A. Correct.

Q. And that's when you first learned about the Waters project.

A. Correct.

Q. So the next question is, when did Genuardi's – how did you learn about the Waters tract first?

A. We were contacted by the Waters people.

Q. Did Genuardi's enter into any discussions with the Waters people in the spring of 1998 about putting a Genuardi's down there?

A. Yes.

Q. And how far did those discussions proceed in the spring of 1998?

A. I'm not sure how to answer your question. We had discussed the possibility of them building a shopping center there. They were looking for a food store to anchor the shopping center and would we be interested.

Q. And what was Genuardi's response?

A. Initially, we were happy with the site up on 926 and 202. It was a better location and that was it.

Q. When was the next contact you had with

* * *

[88] contacted by Waters?

A. I don't recall a date. It would have been before the July meeting, because they were – had suggested I look at that piece that Waters was developing.

Q. Who suggested you look at the Waters piece?

A. It would have had to have been MacDonnell, because he was the person I was talking to at the Township.

Q. And did he say anything, other than you should look at the Waters piece? What did he say about it?

A. I don't recall exactly. I remember the discussion – he was aware that there was a development going on there. Much more than that I don't recall.

Q. Do you know whether or not Genuardi's – in any of the plans that Genuardi's was considering to put a Genuardi's supermarket at Thornbury Noble – did any of those plans involve placing a drug store on the site?

A. Yes, I believe so.

Q. Do you recall the name of the drug – had it proceeded to a point where there was a drug store

* * *

[98] that there's still a possibility that if Mr. Baumholtz could persuade the Township to rezone, that Genuardi's would still consider the 926 location, or was it just we've made the decision, we're going south?

A. Let me say that the 926 and the 202 intersection was always our first choice. I think the discussion with Mr. Baumholtz was based on our discussion with the

Township, that despite the best efforts that you have, they're just not going to approve the rezoning. And that in order for us to not be out positioned by a competitor, we needed to move forward with the Dilworthtown piece.

Q. I'm sorry if I'm repeating myself, but did Mr. MacDonnell ever tell you why the Board felt the way it did about rezoning?

A. I don't know. I don't recall if he specifically got into specifics. They were not happy with the performance of the Acciavatti family in living up to the things that they said they would do. Not that they hadn't done them, but that they hadn't done them timely, and that's just in general reference, not specific.

Q. Did you ever have any conversations with Skip Genuardi about the telephone call you had with

* * *

EXHIBIT 20

[SEAL] **THE COUNTY OF CHESTER** [SEAL]
[Names Omitted In Printing]

November 23, 1998

Constance Dulin, Secretary
Thornbury Township
8 Township Drive
Cheyney, PA 19319-1019

Re: Application for Amended Final Plan Approval, (or Proposed in the Alternative by the Applicant) a Zoning Map Amendment

\# 2606 – Thornbury Township

Dear Ms. Dulin:

The Chester County Planning Commission has reviewed the proposed final plan amendment/zoning ordinance amendment as submitted pursuant to the provisions of the Pennsylvania Municipalities Planning Code, Section 502 (b) and 609(e). We received this referral for review from you on October 19, 1998. We offer the following comments to assist in your review of the proposal:

DESCRIPTION OF THE AMENDMENT:

1. The applicant had received final land development plan approval in 1995 for a 50,000 square foot food market on a site at the intersection of Routes 202 and 926. The food market has not yet been constructed, and the applicant has now proposed shifting the location of the food market within the site in order to achieve a better circulation layout. The applicant has therefore has prepared an application that requests a revision to the approved final plan to allow the relocation, or in the

alternative, a rezoning of approximately two acres from the A-Agricultural/Residential District to the B-Business District.

COMMENT ON THE PROPOSED ZONING MAP AMENDMENT:

2. It appears that the Agricultural/Residential District does not allow land uses such as the proposed food store. The amendment to the final plan to allow the land use would not be supported by the zoning ordinance. Therefore, the rezoning to the Business District would appear to be a prerequisite to allow the relocation of the food store and the revision to the approved final plan.

   The current Township Comprehensive Plan does not contain a future land use map or specific recommendations regarding this site, although the zoning map has been designated as representing the Township's future land use goals. General policy statements in the Comprehensive Plan support the location of commercial land uses where they can be adequately served by road facilities and utilities.

COMMENT ON THE PROPOSED REVISION TO THE LAND DEVELOPMENT PLAN:

3. The elevation changes between the retail site and the areas to the south, and the use of a retaining wall, may result in potentially adverse visual effects on the residential areas to the south and east of the site. If the Board of Supervisors agrees to allow the food store to relocate farther to the east, additional landscaping should be required to protect the residential areas to the south and east. This will also help to reduce potential land use conflicts between the retail

and residential land uses in this area. Special caution should also be taken with exterior lighting, to limit light trespass onto adjacent residential areas.

LANDSCAPES:

4. The County Comprehensive Plan document, *Landscapes*, places this area within a Suburban Landscape, and the food store is consistent with this designation.

RECOMMENDATION: The Board of Supervisors should rezone the site to the Business District. The applicant should revise the final land development plan, and the Township should require additional landscaping as suggested in this letter.

If the Board of Supervisors amends the zoning map as requested, we request an official copy of the action be sent to the County Planning Commission as required by Section 609(g) of the Pennsylvania Municipalities Planning Code. This will allow us to maintain a current file copy of your ordinance.

Sincerely,

/s/ William H. Fulton
William H. Fulton, AICP
Secretary

WHF/WSB/kp
cc: Charles Wilson, Board of Supervisors Chairman
Ronald Miller, Planning Commission Chairman

EXHIBIT 27

[SEAL] **THE COUNTY OF CHESTER** [LOGO]

[Names Omitted In Printing]

August 4, 1998

Mahlon Rossiter, Manager
Thornbury Township
8 Township Drive
Cheyney, PA 19319

Re: Proposed Zoning Map and Ordinance Amendment – Two Parcels from "A" Agricultural Residential to "B" Business District Shopping Center Standards

\# 2546-A – Thornbury Township

Dear Mr. Rossiter:

The Chester County Planning Commission has reviewed the proposed amendment as submitted pursuant to the provisions of the Pennsylvania Municipalities Planning Code, Section 609(e). The original referral for review was received by this office on June 11, 1998 from Robert F. Adams, Township Solicitor. Upon initial review, we noted that the amendment referred to a recodified zoning ordinance. We received a copy of the recodified Thornbury Township Zoning Ordinance July 10, 1998. Consequently, the 30-day County review period began on July 10, 1998. Upon receipt of our review CCPC# 2546, the Township indicated that it appeared that our copy of their Comprehensive Plan was out-of-date. The Township subsequently sent us a copy of the current Comprehensive Plan and this review reflects a revised version of review CCPC# 2546.

The Commission encourages the Township to adhere to the requirements of Section 301.3, 505.a and 609.e of the MPC, which require the municipality to submit all Comprehensive Plan. Subdivision and Land Development and Zoning Ordinance amendments to the County Planning Commission for review prior to adoption. Sections 305.b, 505.b and 609.g of the MPC require municipalities to send copies of adopted amendments to the County Planning Commission. We are better able to assist you with our reviews if we are in receipt of your current ordinances and plan.

We offer the following comments to assist in your review of the proposed map change and ordinance text amendment:

DESCRIPTION OF THE MAP CHANGE:

1. The applicant proposes to amend the zoning map by redesignating two parcels located on the north side of Dilworthtown Road (also referred to as Brinton's Bridge Road) from "A" Agricultural Residential to "B" Business zoning district. The parcels are identified as Tax Parcel 66-1-3, a 19.9 acre parcel and a 80,000 square foot parcel located immediately to the east of parcel 66-4-3. A tax parcel number for this parcel was not identified.

DESCRIPTION OF THE TEXT CHANGE:

2. Section 155-35, Permitted Uses in the "B" Business District, is deleted in its entirety. A new Section 155-35 is added which reproduces the same uses permitted by right in the deleted section and adds "Shopping Center Developments aggregating over 30,000 square feet" or more in gross floor area" as a conditional use, in accordance with Section 155-82.1.

3. Section 155-37.F, a special regulation pertaining to the maximum length or depth of a building (160 feet), is proposed to be deleted in its entirety.

4. Section 4 of the amendment would add a provision to Section 155-39.E(2) relating to parking provisions for "Shipping" (sic) Centers equalling one parking space for every 200 square feet of sales area. The spelling of this provision should be revised prior to adoption.

5. Section 5 of the amendment proposes additions to the Business District sign regulations to include provisions relating to pylon signs, building signs, free-standing business signs and under-canopy signs.

AREA EVALUATION:

6. Existing Land Use: Agricultural/Undeveloped

   Adjacent Land Use: North: Commercial, Stoltzfus RV/Marine
   East: Recreation, Penn Oaks Country Club
   South: Residential – Delaware County
   West: Residential – Birmingham Township

   Site Zoning: "A" Agricultural/Residential District

   Adjacent Zoning: North: "B" Business Stoltzfus RV Marine
   East: "A" Agricultural/ Residential
   South: Residential PRD-3 Thornbury Township, Delaware County
   West: Highway Commercial Birmingham Township

Comprehensive Plan: In the *Future Development* section of the Township Comprehensive Plan (Revised 1990) it states, in Section 6-11.C.4, "Except for present other nonresidential uses (e.g., the Concept School, The Penn Oaks Golf Course, etc.) the balance of the township, which basically consists of the area east of Route 202 and west of Westtown Station, should be preserved as a large lot residential district. In essence, the two poles of the Township, the Cheyney University and the area west of Route 202, will be development districts, with the center of the Township being maintained as a relatively undeveloped and open space area due to the existing floodplain restrictions."

The Chester County Comprehensive Plan, ***Landscapes***, designates the area of the proposed zoning map change as a Suburban Landscape. Suburban Landscapes include areas where infrastructure and public services have been, or should be, extended to accommodate residential development and shopping and employment centers. The Plan encourages design flexibility and a mix of density and uses, either through revitalization or infill, within the Suburban Landscape.

	The proposed use would be consistent with the recommended uses for the Suburban Landscape.
Circulation:	The site is located close to Route 202.
Water and Sewer:	The site would be served by on-site water and sewer.

COMMENTS ON THE MAP CHANGE:

7. The Comprehensive Plan indicates that the "poles" of the Township is where development should be directed. If this statement still reflects the future land use policies of the Township, it would indicate that the map change and ordinance text amendment are inconsistent and should not be approved. If the land use goals of the Township have changed, we recommend that the Comprehensive Plan be updated to define these new land use objectives.

8. Traffic on Route 202 has exceeded design capacity. The proposed use could have a significant affect on vehicle trip generation which would impact traffic congestion on Route 202. PennDOT has made commitments to address capacity improvements and is currently analyzing options relating to improvements at the intersection of Dilworthtown Road and Route 202. If the proposed Zoning Map Change is approved, we recommend that the Township, the applicant, Birmingham Township and PennDOT representatives from the Traffic Unit and the Project Manager for the Route 202 improvements meet to identify the most appropriate treatment for improvements at the Dilworthtown Road/Route 202 intersection and in particular, design options for the northeast quadrant of the intersection.

9. The proposed use could have significant traffic impacts on the surrounding road network particularly the intersection of Dilworthtown Road and Route 202. If the proposed Zoning Map change is approved, we recommend that the Township request a Traffic Study to determine the affects of and to devise strategies to offset any negative impacts generated by the proposed shopping center.

COMMENTS ON THE ZONING TEXT ORDINANCE AMENDMENT:

The following comments are only applicable if the proposed zoning map change is approved.

10. We acknowledge that the conditional use process is an appropriate method for permitting land uses that have the potential to generate significant impacts. As proposed, the provision to permit shopping centers by conditional use only establishes a lower limit on square footage. We suggest that a maximum square footage for this use be incorporated into the amendment.

11. Section 3 of the amendment proposes to delete an existing provision that limits the greatest dimension of any building to 160 feet. We suggest that the Township consider how the intent of this provision to prohibit long unbroken facades or walls of commercial buildings, could be maintained while permitting the economies of scale associated with current construction practices.

12. The parking provisions proposed in Section 4 of the amendment appear to be consistent with current commercial standards. The Township should verify that the quantity of parking proposed is consistent with similar uses and the Township's policy related to

impervious surfaces. The spelling in this provision should be verified prior to adoption.

13. We recommend deleting the phrase "direct external illumination. . . ." in the provision proposed in Section 155-51.B.4.1.e as an ineffective lighting strategy. Internal illumination would also be consistent with the building sign provisions of the following subsection.

14. The pylon sign provision for free standing buildings within the shopping center is unnecessarily duplicative of the shopping center pylon sign provisions and should be removed. Free standing buildings signage should be permitted on the shopping center pylon sign(s).

RECOMMENDATION: We recommend that the zoning map change and zoning ordinance change not be approved because they are inconsistent with the land use policies adopted in the Township Comprehensive Plan and because of the significant affects that the proposed use would have on the local road network.

We request an official copy of the decision made by the Board of Supervisors, as required by Section 609(g) of the Pennsylvania Municipalities Planning Code. This will allow us to maintain a current file copy of your ordinance.

Sincerely,

/s/ William H. Fulton
William H. Fulton, AICP
Secretary

WHF/GPB/kp

cc: Charles A.W. Wilson, Board of Supervisors Chairman
Constance T. Dulin, Secretary
Ronald Miller, Planning Commission Chairman
Barbara Iacovelli, Planning Commission Secretary

EXHIBIT 28

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL ACTION

- - -

THORNBURY NOBLE, LIMITED	:	NO. 99-CV-6460
vs.	:	
THORNBURY TOWNSHIP, CHESTER COUNTY, THORNBURY TOWNSHIP BOARD OF SUPERVISORS, the Members of the Board of Supervisors in their official capacity: PATRICIA A. DEWEY, J. CHRISTOPHER LANG, WILLIAM A. SCHMIDT, JR., CHARLES A.W. WILSON and ROBERT MacDONNELL	:	

March 29, 2001
Exton, Pennsylvania

Oral Deposition of CHARLES A.W. WILSON, taken in the Law Offices of FOX, ROTHSCHILD, O'BRIEN & FRANKEL, LLP., Eagleview Corporate Center, 760 Constitution Drive, Exton, Pennsylvania, commencing at 10:20 a.m., on the above date, before Eileen S. Arrison, Professional Court Reporter and Commissioner of Deeds.

* * *

[127] making that statement?

A. I remember a concern. Again, about the success or lack therefore of the 926 and 202 situation. And from a – I would have to say I'm overstating my position here by saying we, this would have to be an I, or should be an I – and I would say my view here was that I probably had come to feel that if there were – there was probably likely to be one supermarket built. And what I'd be referring to here is that my preference would be that it end up on the Water's tract because, my view would have been, that was probably key to them going forward with their project. If they didn't have that, I didn't know but I suspected, that their project wouldn't go.

Q. Was this discussed at the meeting with Kevin Lahn and Waters?

A. No, certainly not. It's not the type of thing that I would discuss with anybody.

Q. How did you know that there would only be one supermarket built?

A. I said that that was – that was my expectation. There's already an Acme at 926 and 202, there's already a Genuardi's at the Glen

* * *

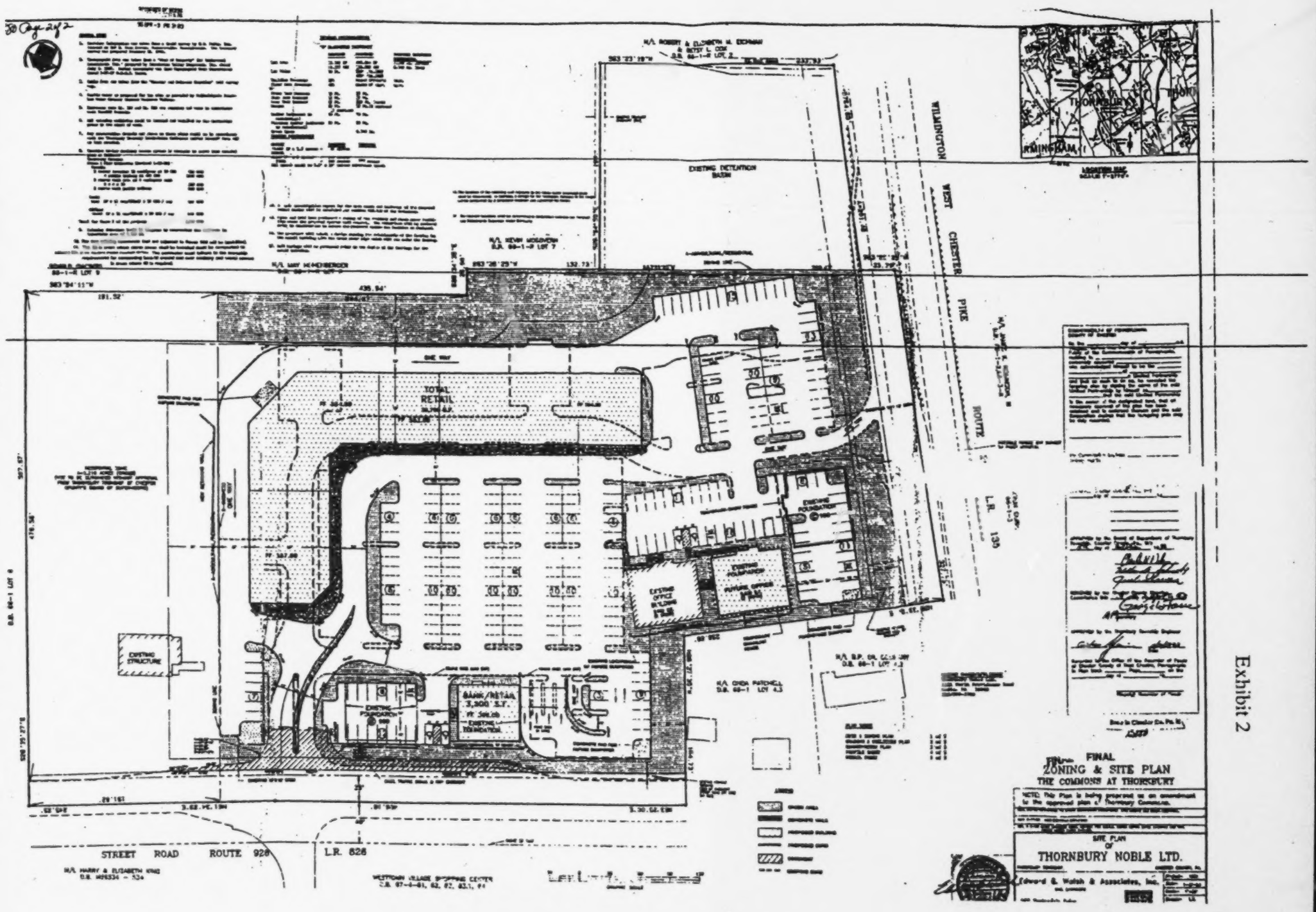


Exhibit 2

BEST AVAILABLE COPY

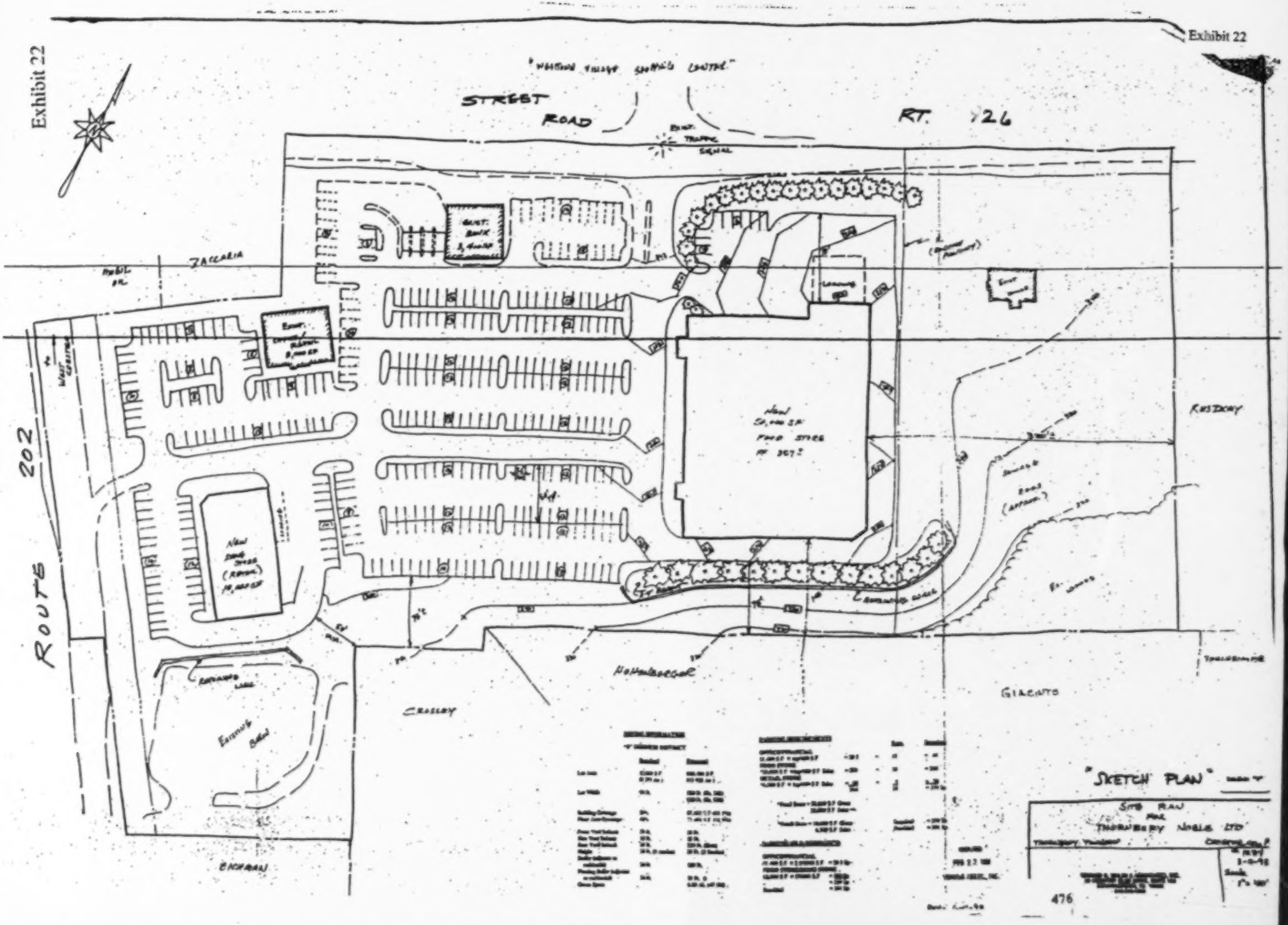
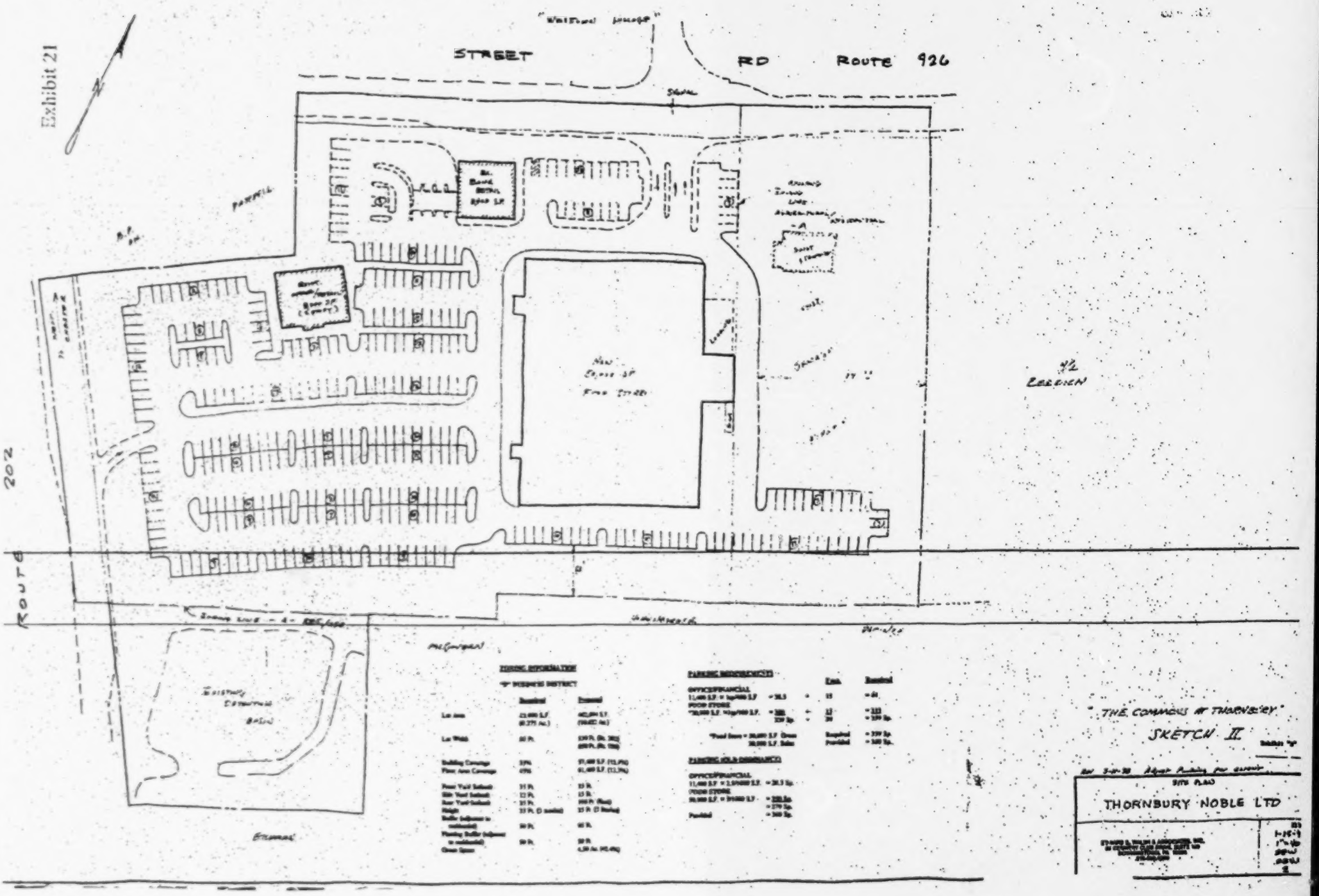


Exhibit 22
Exhibit 22
STREET
ROAD
RT. 126
ROUTE 202
"SKETCH PLAN"
476

Exhibit 21


STREET
RD
ROUTE 926
ROUTE
202
"THE COMMONS AT THORNBURY"
SKETCH II
THORNBURY NOBLE LTD